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► Temporary labour migration: Two studies on workers' perspectives and actions



Temporary labour migration: Two studies on workers' perspectives and actions

Nicola Yeates and Nora Wintour

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Temporary labour migration: Two studies on workers' perspectives and actions

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► Preface

The following studies on workers' perspectives and actions regarding temporary labour migration are part of a larger ILO project to gather knowledge on temporary labour migration.

The June 2017 International Labour Conference (ILC) tasked the International Labour Office with new knowledge development regarding temporary labour migration; the Office should conduct a global comparative analysis. Constituents debated the issue, of great concern to them, and underscored the importance of the topic for the future of work. (106th Session of the International Labour Conference (2017), Resolution concerning fair and effective labour migration governance). As a follow up to this ILC request, the Office undertook a mapping of existing knowledge concerning the scope, use and effects of circular and temporary migration schemes and will prepare a synthesis report for submission to the Governing Body in 2022 (GB.331/INS/4/1(Rev.)

Temporary labour migration programmes can be set up unilaterally by migrant destination countries but often they are based on some kind of agreement (bilateral treaty, MOU, or similar) between an origin and a destination country. Much of today's temporary migration also occurs under regional integration schemes and their free movement provisions.

The views on temporary labour migration vary greatly, including among ILO constituents. In light of the various concerns that the complex dynamics of temporary labour migration raise, it will be crucial for the Office to capture constituents' perspectives to enrich the debate. This document gathers studies that are inputs from the Workers' side to this process. While they differ in method, they are highly complementary reflecting views on approaches around the world. In Part I, Professor Nicola Yeates explores terms used and governance mechanisms in relation to temporary labour migration and provides a desk-review analysis on forms of engagement by workers' organizations including campaigns, with a special focus on the health sector. Part II, written by consultant Nora Wintour, examines multi-level legal frameworks wherein policy making on temporary labour migration takes place and related trade union programmes; this part is based on open-ended interviews with numerous trade union officials and representatives. We hope that these studies will help readers better understand the Workers' position on the topic.

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Part I.

Global union federations and temporary and circular labour migration: an illustrative review

Nicola Yeates

► Executive Summary

Significance of temporary and circular migration

- Temporary and circular migration (TCM) is of great significance to all participants in the production and consumption of goods and services worldwide. It is integral to on-going processes of global economic and social restructuring. Sometimes promoted as a highly-desirable option of mutual benefit to all parties - a 'triple-win' solution to countries of origin, countries of destination/employment, and to migrant workers (and their families) - TCM is in practice often associated with labour exploitation, environmental degradation and social depletion. Ensuring decent working conditions for all workers everywhere is a priority for international trade unions.

Aim, scope, method and data sources

- This study collates information concerning trade unions' activities as they relate to TCM. Its scope does not include the effectiveness and impacts of their activities. It aims to be illustrative of those activities, not comprehensive. It is based on desk research focused on public-facing websites of global union federations (GUFs), supplemented by information from academic, policy and 'grey' literatures. The research was conducted and the paper written during November 2019. Part of the paper on Global Skills Partnerships (GSPs) draws on prior academic research conducted with Dr Jane Pillinger during 2018. Final adjustments to this paper were made following comprehensive review of an earlier draft in February-March 2021.

Definition of terms

- TCM is a long-standing feature in some sectors and countries, at all 'skill' levels. Temporary migration refers to movements of a fixed-term character across international (state) borders, usually for work. Circular migration involves short-term repetitive movements of the same migrants across borders, usually for work. Circular migration is by definition temporary migration, though it can sometimes lead to permanent (long-term) migration and settlement.
- TCM occurs within and outside the scope of managed migration programmes.
- Governance of TCM is constituted on a multi-level basis and involves a multitude of social and policy actors. The international labour movement, workers' organisations, and workers themselves are all such actors.

GUF engagement with TCM

- Modes of engagement with TCM vary among GUFs. Some address TCM via labour migration and migrants' rights issues, others do so via issues of precarious work and atypical work. They do not always distinguish between migrant and non-migrant labour, or between temporary and circular migration.
- Advocacy initiatives are a prominent mode of GUF action, followed by service provision. TCM-focused worker organisation activities take place through advocacy initiatives and services provision.

- GUF advocacy on TCM takes different forms. The balance of these vary between GUFs, as does the intensity of engagement over time. Specific activities include sector-specific cooperation and framework agreements with employers, regional networking, resources for migrants and intending migrants, and inter-union joint principle agreements.
- Further research would help elaborate a wider picture of how GUFs' engagement with TCM pans out on country, regional or industry-level bases, together with their impacts.

GUF research evidence in relation to TCM

- Temporary and circular labour migrants face severely exploitative working conditions. A decade ago, the International Trade Union Confederation (ITUC) highlighted that they are much more susceptible to abusive treatment and sub-standard working conditions than long-term migrants. Noted problems include: limitations on their right to join and/or form a trade union and to practise collective bargaining; lower wages; restricted access to social security and training; restrictions on the right to change jobs or employers and the right to family reunification.
- More recently, GUF-commissioned studies highlight a range of social harms to temporary and circular labour migrants as a result of predatory employer practices. These studies found strong links between:
 - low quality jobs, the use of migrant labour – including the use of temporary contracts – and the production of dependency and poverty;
 - the use of temporary/casual (migrant) labour and employer-generated harms to the health of the workforce and the local environment in the form of ecological degradation;
 - temporary migration, casual labour and sexual harassment and violence.

Highly-skilled TCM in the health sector

- Since the early 2000s TCM has become increasingly prevalent in the health sector.
- Public Services International (PSI) and ITUC do not support TCM.
- Bilateral labour migration agreements (BLMAs) are a principal instrument promoting TCM. Most BLMAs are little more than short term agreements to provide quotas of health workers on a temporary basis, devoid as they are of reciprocal arrangements to compensate source countries for loss of health workers or support workers' rights.
- BLMAs promoting TCM are embedded in international initiatives such as EU Mobility Partnerships and Ireland's International Medical Graduate Initiative. Health sector trade unions have no role in the formal governance structures of these initiatives.
- There is growing international support for Global Skills Partnerships (GSPs). PSI and ITUC strongly oppose the dominant model of GSPs. PSI has set out an alternative model founded on ILO's normative framework on migration, labour rights and fair recruitment, and implementation based on government-to-government cooperation via public-public partnerships and with the full involvement of trade unions.
- There is a prime opportunity for workers' organisations to further shape the terms of debate regarding GSPs.

► Acknowledgements

The author sincerely thanks all the trade union officials and colleagues in the ILO's Bureau for Workers' Activities (ACTRAV) and Labour Migration Branch (MIGRANT) who contributed information and who clarified many points during the course of preparing this paper. The paper is illustrative not exhaustive of activities regarding TCM. Any errors of fact or interpretation are the responsibility of the author.

1. Introduction

This paper addresses complex themes and issues relating to temporary and circular migration (TCM) on an international scale from the perspectives of workers and their organisations.¹ This topic is of great significance to all participants in the production and consumption of goods and services worldwide – most obviously workers and their families, and workers’ organisations, but also employers, businesses, industry associations, governments, customers, consumers and citizens more widely. Each and every one of these participants has a stake in the highest social and environmental standards at all stages of the economic process consistent with their country’s obligations as an ILO member. The scale, significance and implications of such migration in today’s world are such as to have directed attention to how migration enables socio-economic infrastructures of many countries and regions of the world. The morality and sustainability of these systems is in question to the extent that these infrastructures are founded on social and economic inequality, with millions of migrant workers and their families subjected to indecent living and working conditions and experiencing harmful outcomes as a result of them.

TCM is sometimes promoted as a highly-desirable option of mutual benefit to all parties - a ‘triple-win’ solution to countries of origin, countries of destination, and to migrant workers (and their families). It is apparent that discourses on TCM do not reflect the views of workers and their organisations. Indeed, they may all too readily become bywords for labour exploitation, environmental degradation and social depletion. Ensuring that decent working conditions are prioritised on the basis of equality as a principle of the first order is an issue to which international trade unions have long been sensitive. Consequently, over the last decade they have been at the forefront of campaigns to highlight the social risks and economic costs of TCM, helping to challenge it as a social model and as an approach to reconciling multiple public policy objectives (Wickramasekara 2011).

Still, there remains much scope to extend knowledge of the variety of ways in which workers’ organisations are engaging with TCM. To this end, the remit of this paper is to:

- spotlight examples of workers’ experiences and workers’ organisations initiatives that bear directly on TCM;
- highlight how workers’ experiences are being promoted by workers’ organisations in their engagement with TCM in different countries and contexts;
- provide a basis for subsequent focused interviews with workers’ organisations (undertaken by an independent consultant); and
- support stakeholders to engage in dialogic processes on this issue.

The paper features examples from diverse economic sectors. It makes especial reference to the health sector (Section 5) where TCM is prominent on global policy agendas as a triple-win-inspired solution to mitigate the adverse health and wider development impacts of high, sustained levels of international health worker recruitment and migration. The paper is not intended to be, nor is it written as, a comprehensive research paper and should not be read as such.

¹ Circular migration usually refers to internal migration, but this paper focuses on international migration.

2. Temporary and circular migration: terms, modes, governance

We begin by noting broad-based distinctions between temporary migration and circular migration, together with the points of connection between them. **Temporary migration** refers to movements of a fixed-term character across international (state) borders, usually for work. Temporary labour migrants migrate for a limited period – from a few months to several years – in order to take up employment and send money home as remittances (Castles, 2000). They enter a country for a fixed-time period for a particular occupation or employer, and must leave the country at the end of that period. That said, temporariness (or indeed permanence) may not always be intended from the outset of the migration trajectory, and decisions change as professional or personal circumstances change.

Circular migration refers to a specific form of temporary migration - “temporary movements of a *repetitive* character either formally or informally across borders, usually for work, *involving the same migrants*” (Wickramasekara 2011: 2; emphasis added). ‘Circular’ migration captures multiple back and forth movements between the country of origin and one or more countries of destination/employment. The number of countries of employment involved may be limited to two but may extend to multiple destinations. Such ‘circular’ movements vary from a few weeks to several months at a time. In this sense, circular migration is distinct from permanent and return migration. It is, by definition, temporary migration, which is why circular migration is often seen as an alternative label for temporary migration (Castles and Ozkul 2014). However, it can sometimes lead to permanent (long-term) migration or final return (Wickramasekara 2011).

We can distinguish between ‘**spontaneous**’ and ‘**managed**’ modes of temporary and circular migration. The ‘spontaneous’ mode refers to migrant movements outside of managed migration programmes, while the ‘managed’ mode refers to migrant movements ‘sponsored’ by formal programmes (from Wickramasekara 2011; see also ITUC 2011, and Castles 2000). The managed mode is a key policy tool used to address sensitive and contentious issues of today’s international migration (Wickramasekara 2011). It is a long-standing feature in some sectors and countries, not only in ‘low-skilled’ work but also in ‘high-skilled’ work (e.g. formal nursing or medical exchange schemes between countries date back many decades). Social actors in managed migration modes are diverse: “Entities most commonly engaged in temporary or circular programmes are private recruitment or placement agencies, public or non-profit partners mandated by bilateral governmental agreements, and bureaus of employers’ organisations which may themselves also hire recruitment agencies” (ITUC 2011: 7).

It is important to note that spontaneous and managed modes are not co-terminous with ‘irregular’ and ‘regular’ migration, though ‘irregular’ TCM tends to be more associated with the ‘spontaneous’ mode. Also, in practice, ‘spontaneous’ and ‘managed’ modes, as with ‘regular’ and ‘irregular’ migrations, are governed by *multiple (and changing) regulatory frameworks, institutions, policies and norms spanning several distinct sectors*. These go well beyond terms of admission to (and right to remain in) a country and the employment relationship. Welfare, health, education, housing, family repatriation policies also shape migrant workers’ labour strategies, their experiences of work whether at home or abroad, and the frequency of return trips in the case of circular migration.

Furthermore, the dispersal of myriad participants in such programmes across jurisdictions challenge assumptions that legal obligations of employers and rights of workers are co-located in the same jurisdiction. The labour movement has been alert to the necessity of modes of organisation and engagement concomitant with this international ‘fragmentation’. Workers’ organisations are increasingly giving greater priority to this issue in relation to circular migration.

The ‘thickening’ of **global migration governance** necessitates looking beyond country-level or country-specific experiences to also examine how workers’ organisations (and other social actors) participate in policy- and regulation-making in *cross-border* spheres of governance.

One such sphere increasingly recognised as being of major significance is the world-regional one. Regional integration projects have often sought to 'lock in' international flows of capital and labour on a regional basis – the EU's Single Market is the best-known example, but other regional formations in other parts of the world also try to facilitate intra-regional international labour migration as part of creating a common economic area. Indicatively, in the health sector, the Managed Migration Programme of the Caribbean Community initiated a circular migration programme for health workers in an attempt to stem the permanent loss of its trained health workers to countries outside the region.² Mutual recognition agreements have been instituted by governments of the Association of SouthEast Asian Nations (ASEAN) that aim to promote temporary migration of highly-skilled health workers without social standards necessarily being offered on the basis of equality (Yeates and Pillinger 2018). One issue arising is differentials in the regional labour and social rights of 'high' vs 'low' skilled workers³ – not just the right to migrate of individual workers but also that of their families, as well as their collective right to decent conditions of work, social protection, education and health care. Further research would help better understand how such rights are present or absent in different sorts of regional integration process. One question is whether international labour standards and decent work principles are embedded from the outset in regional (and trans-regional) integration projects. Another is to what extent are workers' organisations deemed equal partners with full 'proposal rights' to shape such projects via a formal role in their governance structures.

Cross-border spheres of governance and policy-making are important platforms for developing, amplifying and disseminating TCM as a solution to various public policy challenges. International organisations have taken up the so-called triple-win discourse. Wickramasekara's (2011:5) paper on circular migration, which focused on low-skilled workers, identified the Global Forum on Migration and Development (GFMD) and European Commission (EC) as exemplar platforms in this regard, and how

► Circular migration currently seems to have replaced the issue of migrant remittances as a key element in the nexus between migration and development. It has been projected as being at 'the cutting edge of migration and development'. Yet some have pointed out that the arguments put forward in favour of circular migration are the same as those previously highlighted in the context of temporary migration programmes.

Since Wickramasekara was writing, TCM as a significant global social policy phenomenon has grown in traction and significance. It has:

- extended beyond lower-skilled workers to also being applied to higher-skilled workers, such as health workers;
- been taken up by more international organisations; and
- featured in many international initiatives.

2 For example, encouraging emigrant Caribbean nurses to voluntarily return to nurse in the region and share their nursing expertise; recruitment of nurses from destination countries to work in the Caribbean for a limited period; instituting incentives for emigrant nurses to return to the Caribbean and instituting disincentives to stay in the destination country (Salmon et al., 2007; Yeates 2010).

3 For further accessible discussion on social, health and labour policy implications of regionalisation trends in the world politics and economy see Yeates 2014 and 2017.

TCM has become enshrined in global development agreements and goals. The Global Compact on Safe Orderly and Regular Migration (hereafter, Global Compact) (UNGA 2018) explicitly references TCM within the ambit of 'flexible, rights-based and gender-responsive labour mobility schemes' developed to respond to labour market shortages across all skills levels. Alongside the SDGs' commitment to human rights and humane treatment, the Global Compact commits to visa and permit options that are 'flexible', 'convertible' and 'non-discriminatory', while also reinforcing the extant commitment to implementing ILO Conventions to ensure that social security entitlements and other benefits earned by workers abroad are fully portable between countries (Objective 22(b)). These are important initiatives in their own right, but as 'frontline' global initiatives they are all the more significant because of their connections with other sector-specific initiatives – notably, in health, Global Skills Partnerships and Mobility Partnerships. In this regard, it is highly notable that although ITUC welcomed the recognition that trade unions have an important role to play in ensuring decent work for migrant workers, it also denounced the potential for millions of workers to be excluded from ILO standards.⁴

TCM is now firmly in the mainstream of international policy currents. The range of reasons for this do not seem to have changed fundamentally since Wickramasekara's (2011) study – namely as means of responding to labour market needs 'flexibly' and combating irregular migration. Although TCM is looked at through lenses other than 'Migration-Development', the triple-win discourse is invoked in a wide range of circumstances listed by Wickramasekara: "...meeting labour market needs in destination countries without permanent settlement; mitigating the brain drain; promoting development in home countries through a steady flow of remittances, return of skills and enterprise creation, minimizing irregular migration and meeting the aspirations of migrants themselves to be away for short periods" (p. 85). If anything, the SDGs and Global Compact have strengthened adherence to TCM in international social, migration and development policy discourses. That said, it would be unfair to deny the very real achievements of those who have sought to defend migrants' rights to fair and equal treatment within the Global Compact itself⁵ and across a range of realms through their continuous engagement – which, as this paper shows, takes different forms.

How governments (and others) interpret and apply in practice their commitments under the SDGs and Global Compact will be closely monitored. Workers rely on trade unions for a robust response to the non-fulfilment, unfair or predatory interpretation of obligations under those agreements. They also expect them to shape the political environment and permitted practices relating to TCM. Such responses are likely to be contingent (place- and time-specific), reflecting the balance of power in specific places at particular points in time. Research into labour activism confirms this point, signalling the continuing importance of national political systems, countries' industrial and labour market profiles, and government policies in determining the 'space' available to workers' organisations at the level of individual countries, together with how trade union activism and power varies considerably within countries by sector and geographical area. Such factors bear importantly on the capacity of workers' organisations to implement specific projects, realise wider movement goals or otherwise influence the local labour movement (Ford 2013, 2019). Additionally, though, maximising the integration of labour rights and principles of decent work and social protection for all migrant workers, whether long-term or temporary, must be continually argued for, refreshed and renewed locally, nationally and internationally, across multiple sites and forums of governance. This implies a strong and enduring commitment to resourcing such engagement and to the importance of 'sentinels' in identifying issues arising.

4 ITUC's view is available at: <https://www.ituc-csi.org/global-compact-on-migration>

5 Labour's Demands for the Global Compact on Migration 13-12-2017 (ITUC).

3. Research methods

This researcher was asked to focus only on GUFs' websites. During November 2019, GUFs' websites were searched using the terms 'temporary', 'circular', 'migration', 'migrant', 'migrants', 'agency work', 'contract work', and 'precarious' [work] – and combinations of these. The search covered different sections of the websites, incorporating sections on documents, publications, agreements, news, updates, and campaigns. News items reporting on issues and campaigns were traced back three years; others were traced back further. The research captured what the websites presented. If no information was provided, this was recorded as a blank. It may well be that constituent unions are campaigning/active on issues of temporary and circular migration in regional or country contexts but unless this activity is reported on the website it is not included in this paper. A comprehensive analysis would examine the websites and social media of member organisations regionally and nationally worldwide, as well as carry out detailed country- and sector-specific research.

The absence of information available on an organisation's website does not necessarily mean non-engagement by a GUF with TCM. Self-reporting of activities via the website cannot be assumed to convey the full range of engagement activities a GUF undertakes. Equally, what is reported may not explicitly incorporate the target group of this paper. There were, for example, instances of projects and campaigns on 'atypical' or precarious work and anti-casualisation which did not explicitly refer to temporary or circular migrants/migration. Also, not all modes of engagement of a GUF with TCM may be fully reported via its website. This might help explain the preponderance of advocacy modes of engagement found during this search, with far fewer positive findings for servicing and organising modes. Public-facing websites are not a fully reliable guide to an organisation's activities.

4. Search results

The research revealed considerable variation in the degree of direct and explicit engagement with temporary migration and/or circular migration – either in 'spontaneous' or in 'managed' modes. From the review of the websites of the fourteen GUFs covered by this research, those explicitly engaged with TCM are:

- Building and Woodworkers International (BWI);
- Education International;
- IndustriaLL Global Union;
- International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Association (IUF);
- Public Services International (PSI);
- International Transport Workers' Federation (ITF);
- International Trade Union Confederation (ITUC), and
- UNI Global Union.

Each of them demonstrably addresses issues of TCM *to some extent*, albeit mostly as an issue within labour migration more generally. No explicit reference to circular migration (as distinct from temporary migration) was found with the exception of PSI and to a lesser extent ITUC. The organisations' websites vary considerably in their coverage of constituent unions' activities on TCM, both in terms of the extent of activity and its nature. It was often less than clear whether the organisations are engaging with temporary, circular or permanent migration, and this may reflect the difficulties of clearly distinguishing between these categories (Section 2, above).

Table 1 identifies for seven GUFs engagement with TCM in organising, servicing and advocacy initiatives. I do not claim this data is comprehensive – rather, it is indicative and illustrative. The size of the symbol in each of the cells signals the extent to which this mode features in any union's activities as reported on their websites: a small tick signals evidence of activity in this mode; a large tick signals the mode(s)' apparent dominance; a cross signals no information was found. Table 2 elaborates different forms and instances of collaboration by global unions.

► Table 1.
Typology of engagement with temporary and circular migration as applied to seven GUFs

	Organising	Servicing	Advocacy
BWI	✓	✓	✓
IndustriALL	X	X	✓
ITF	X	X	✓
ITUC	✓	✓	✓
IUF	✓	✓	✓
PSI	X	✓	✓
UNI	X	✓	✓

Data source: the author, adapting Ford's (2013) typology of GUF engagement.⁶

Note: BWI: Building and Woodworkers' International, IndustriALL, ITF: International Transport Workers' Federation, ITUC: International Trade Union Confederation, IUF: International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, PSI: Public Services International, and UNI Global Union.

⁶ Ford defines servicing as 'the relationship between unions and migrant workers not part of the trade union structure. This mode of engagement maintains distance between local and temporary migrant labour, as unions 'reach out' to 'service' migrant workers without integrating them into the union' (p. 268). 'Organising', on the other hand, 'involves either separate organising of migrant workers into purpose-specific trade unions (which also maintains distance between local and migrant workers) or their recruitment into an existing trade union' (ibid). Organising implies greater integration among unions and migrant workers than servicing. 'Advocacy' refers to involvement in (founding, driving) campaigns for the purpose of (for example) raising awareness, encouraging involvement of others with this issue, and promoting collaboration (Ford 2013: 268). I have interpreted advocacy to include research undertaken by or on behalf of trade unions, and also as activities promoting collaboration not only between TUs and NGOs but also between TUs and employers (e.g. through global framework agreements). Information detailing instances of advocacy actions is provided separately in Table 2.

► **Table 2.**
Forms of collaboration pertaining to TCM-relevant advocacy, with examples, for six GUFs

	BWI	IndustrialLL	ITUC	IUF	PSI	UNI
Research				✓ Migrants in agriculture	✓ Migrants in the health sector	
Collective bargaining agreements	✓ Cooperation agreements, with Supreme Committee for Delivery of Legacy (2016), and with QDVC and Vinci (2017) (both Qatar)	✓ Brunel-Metalworkers Global Framework Agreement 2012		✓ Unilever Global Framework Agreement 2019		
Non-bargaining forms of collaborative activity			✓ Migrant worker 'Recruitment Advisor' platform Regional networks		✓ Pre-departure briefing resources Model bilateral labour agreements	✓ UNI-Europa migrant workers network
Inter-union collaboration	✓ Morocco Manifesto 2018		✓ Joint Principles on Temporary Labour Agencies agreement 2010 (IUF/ITUC/TUAC)			

Source: compiled by the author

Note: BWI: Building and Woodworkers' International, IndustriAll, ITUC: International Trade Union Confederation, IUF: International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, PSI: Public Services International, and UNI Global Union.

The thumbnail sketches below are illustrative of the types of work that some GUFs are carrying out.

IUF have commissioned research publications addressing TCM dimensions of agency work and casualisation in the sectors with which it deals. Meetings with workers in the context of campaigns have been opportunities for servicing type of outreach activities.⁷ IUF's main focus is on the agricultural sector in which migrant workers constitute up to 80% of the labour force, and the issues it identifies is overseas migrant labour has been brought in from other countries rather than relying on local (internal) migrant labour (IUF 2008). It has also been active in relation to the use of temporary/casual migrant labour in the food processing industry, for instance: "Migrants are also becoming a key part of the labour force in food processing, after the crops and animals leave the fields for the abattoirs and factory production lines. Even permanent tasks, previously done by workers with proper employment contracts, are now done by an everchanging workforce of temporary workers, many of them migrants." (IUF 2008: 5).⁸ IUF has also attended to the heightened risk of sexual harassment in the hospitality industry that female workers (a large share of whom are migrants) experience and/or are exposed to. IUF has campaigned around domestic work, an occupation in which migrant women predominate, in 2010, during the lead up to the ILO Convention on Domestic Workers. IUF helped set up the International Domestic Workers' Federation that then took over the work of campaigning and advocacy. (<https://idwfed.org/en>).

ITUC highlights the greater use of TCM as a scourge of contemporary global neo-liberalism (ITUC 2011, 2012). ITUC has not ceased to be vocal on the issue. It was a key part of advocacy during the negotiations on the GCM – i.e. ITUC and affiliates were active in denouncing the decent work deficits of TCM.⁹ These positions were also evident during the 2017 General Discussion at the ILC and the initiative, of which this paper forms a part, is the result of workers advocacy led by the ITUC during the 2017 General Discussion at the ILC. ITUC has continued to argue for more and fairer regular pathways for labour migration, including pathways to permanent residence and citizenship, where migrant workers so desire. It has also emphasised the danger of bilateral agreements, through which TCM is often "managed", becoming the main governance model rather than the international norms which govern migration. This remains its position viz implementation of the Global Compact on Migration and is part of the guidance for unions participating in regional review processes.

ITUC's Frontline Campaign and Four Pillars for Action 2020 (2019) does not explicitly reference TCM, but there are many aspects of this that are relevant. These include the fair and equitable governance of global migration, which is integral to the ITUC's work under the Equality Pillar, including the quality of jobs as well as working conditions under temporary and/or circular contracts. Furthermore, the ITUC is focusing on 5 key demands in 2021 1) Climate friendly-jobs, 2) Rights for workers, 3) Universal Social Protections, 4) Equality & 5) Inclusion), of which 1, 2, 3 and 4 are particularly pertinent to TCM. Its migrant worker 'Recruitment Advisor' platform¹⁰ launched in April 2018 accounts for its tick in the servicing activity cell in Table 1. This platform is not particular to temporary or circular migrants though they are encompassed by it, of course. Recruitment Advisor is a means by which migrant workers can source information about their labour rights and post comments about their experience of named recruitment agencies.

⁷ For example, 'FLAI-CGIL's Red Gold Campaign to stop exploitation in Italian tomato fields brings results' (2009) <http://www.iuf.org/w/?q=node/232> Note this exemplifies a finding that is relevant to but not tagged as being 'about' temporary and circular migration.

⁸ See also: *Global agreement on sustainable employment in Unilever manufacturing* (<http://www.iuf.org/w/?q=node/6861>) 13 May 2019; *European meat affiliates demand action to stop abuses* (<http://www.iuf.org/w/?q=node/5193>), 25 October 2016; *Australia: meat workers stood down, migrants cast adrift* (<http://www.iuf.org/w/?q=node/4216>), 7 May 2015; *FLAI-CGIL's Red Gold Campaign to stop exploitation in Italian tomato fields brings results* (<http://www.iuf.org/w/?q=node/232>), 1 October 2009.

⁹ See briefings for affiliates, including global unions briefing (<https://www.ituc-csi.org/labour-s-demands-for-the-global>) which has strong language on temp and circular migration; see also <https://www.solidaritycenter.org/wp-content/uploads/2017/07/Migration.SBB-Statement.UN-Global-Compact-on-Migration.7.17.pdf>. ITUC is a member of WIMN and collaborates closely with the Solidarity Center, as do many of its affiliates.

¹⁰ <https://www.ituc-csi.org/ituc-launches-migrant-worker> (April 2018) The link to Recruitment Advisor is <https://www.recruitmentadvisor.org/>

Cross-border collaboration between unions is being fostered through the ITUC member networks on migration, including ATUMNET¹¹ and the RSMMS.¹² Since 2015-16, the ITUC has regularly brought networks from Africa, Europe and Latin America together to develop common frames of priorities and action, and addressing decent work and human rights deficits (including settlement, citizenship and family reunification rights) inherent in TCM models is a part of this collaboration. One of ATUMNET's key demands has been the promotion of free circulation within the Africa region.

IndustrialLL Global Union carries an interesting example of the Australian Metal Workers' Union's (AMWU) Global Framework Agreement (GFA) with the Netherlands-based Brunel recruitment firm, which states that temporary migrant workers are only used where essential and they are allowed full union protection as well as working conditions on the basis of equality (<http://www.industriall-union.org/brunel>). AMWU signed the GFA with the rationale that: 'supporting immigration on the basis that migrant workers have full citizenship and other rights... [agreement with Brunel ensures that] temporary migrant workers are only used where absolutely necessary and that they receive training, equal wages and conditions and union and collective agreement protection' (2012). This GFA arose in response to the excessive use of temporary migrant labour to undercut wages and conditions in Australia. It only applies to that sector in that country, even though Brunel operate across many economic sectors and more than 100 countries worldwide. Other GFAs listed on IndustrialLL's site do not refer explicitly to migrant labour but to avoiding excessive use of temporary or agency labour, and to prioritising permanent over temporary employment. In this sense, the AMWU-Brunel GFA is exceptional. No information about monitoring the implementation of this GFA was found on the public website.

UNI Global Union (UNI-Europa branch) reports the extension of its Migrant Workers' Network to reach out to migrant workers and to build bridges to their communities.¹³ It also carries an extended feature on the use of temporary migrant workers in Sabah Malaysia.¹⁴

ITF carries a press release and video in relation to the use of migrant workers on temporary contracts in the Qatari aviation industry (<https://www.itfglobal.org/en/news/itf-lobbies-icao-action-qataruae-rights-abuses>, July 2014; Qatar Airways One voice: https://youtu.be/B9A6Ya_Dxyg, Jan 2015).

BWI has many publications for workers thinking of migrating and many research publications. Illustratively, it features a press release of academic research by Michele Ford (Ford 2019) on GUFs and temporary migration in Asia, in which BWI (amongst other GUFs) feature.¹⁵ In November 2016, BWI signed a Cooperation Agreement with Supreme Committee for Delivery of Legacy (responsible for planning and operations for the world cup) focused on occupational health and safety inspections on accommodation and construction sites for the 2022 FIFA World Cup.¹⁶ Building on this, in 2017 BWI and QDVC and Vinci (two construction sector companies) signed an agreement covering human rights at work, accommodation, and issues related to fair recruitment and employment rights of workers. It applies to all workers employed by QDVC in Qatar, and includes due diligence with sub-contractors. This agreement is the first of its kind in Qatar between a union federation and a Qatari company. The agreement notably includes an extensive system of follow-up, reporting, monitoring, inspection, and auditing under the authority of a reference group composed of representatives of the three parties. All aspects of the implementation of the agreement will be continuously reviewed by the three parties.¹⁷

11 See, for example, <https://www.eesc.europa.eu/en/news-media/presentations/migrant-workers-experience-atumnet>

12 See, for example, https://mena.fes.de/fileadmin/user_upload/pdf-files/general/EN_Tunis_Declaration_RSMMS_072019.pdf and https://mena.fes.de/fileadmin/user_upload/pdf-files/general/EN_RSMMS_Conf.Agenda_2-4_July_2019.pdf

13 *Reaching out to all Migrant workers* <https://uniglobalunion.org/news/reaching-out-all-migrant-workers>, 7 March 2008.

14 *Sabah - migration of foreign workers* Published: 19 March 2009, <https://uniglobalunion.org/news/sabah-migration-foreign-workers> [date listed on website: 22 October 2013].

15 <https://odo.o.bwint.org/cms/news-72/from-migrant-to-worker-1510> (October 2019).

16 For further details, see <https://www.bwint.org/cms/bwi-cooperation-with-supreme-committee-for-legacy-and-delivery-continues-despite-covid-19-1777>

17 For further details see <https://www.bwint.org/cms/news-72/bwi-signs-an-agreement-with-qdvc-and-vinci-a-world-premiere-on-these-issues-in-qatar-871>

PSI features many Pre-Decision Booklets on Labour Migration for Health Workers which (among other things) summarises provisions in ILO Conventions on temporary migration.¹⁸ These are available in different languages and designed for different countries, and a 'kit' or suitcase of materials. It has a strong presence on – and analysis of – intersections of migrant rights, equality, and gender, in relation to which its engagement with TCM is positioned. Its critique of Global Skills Partnerships and bilateral labour agreements in the health sector incorporates a strong union position on temporary and circular labour migration that is also sensitive to attaining global goals of universal health care coverage, universal labour protection, and universal social protection (see Section 5, below).

Inter-global union collaboration examples include the Council of Global Unions working group on migration. This is a standing group, whose work is guided by the Morocco Manifesto, signed by BWI and other unions.¹⁹ Another example is the Joint Principles on Temporary Labour Agencies of ITUC, IUF and TUAC²⁰ is directed primarily at curbing the expansion of temporary employment contracts for all workers. The IUF's press release highlights the 'special dangers for migrant workers, who are often engaged by temporary agencies or other intermediaries'.²¹

It is notable that global unions' websites do not use the term 'circular migration', and seem mainly concerned with forms of temporary work and the use of international migrant labour therein. Information from these websites is not sufficient to draw any firm conclusions about how GUFs' engagement with TCM pans out on country, regional or industry-level bases, let alone their impacts. Further research can help contribute some answers on this.

Some websites feature coverage of more general labour migration and migrants' rights issues (e.g. ITUC, IndustriALL, EI) which are framed as ones of decent work, equality and development. Others carry features on precarious work and atypical work but do not distinguish between migrant and non-migrant labour, let alone temporary/circular migration (IAEA, ITGLWF, TUAC). Others still carry nothing on migration at all (IFJ, TUAC).

Finally, model bilateral agreements between trade unions in origin and destination countries address protection gaps relating to the rights of migrant workers under TCM programmes. Unions are committed to promoting the ratification of ILO migrant workers Conventions (No. 97 of 1949 and No.143 of 1975)²², to actively campaigning against racism and xenophobia, and to combatting discrimination and misleading propaganda in the countries of origin and destination. An initiative supported by the ILO Bureau for Workers' Activities (ACTRAV), commits unions to addressing the situation of migrant workers through international trade union solidarity, social justice, equal treatment, equal opportunity, and gender equity. It also commits them to organising and advocacy forms of engagement with migrant workers, including those in TCM programmes.²³ Over the course of 2009-2010 several agreements based on this model agreement were signed. Initially this was by unions in Asian countries of origin (Sri Lanka) and Arab countries of destination (Bahrain, Jordan and Kuwait), which later extended to regional trade unions (the International Trade Union Confederation for the Americas (TUCA) pledged to promote the model agreement in their region in December 2009) and unions in Africa (Burkina Faso, Guinea, Ivory Coast, Niger and Togo) (Wickramasekara 2011: 80-81). A desk-based follow-up search did not surface information on the implementation of these agreements.

18 Philippine Pre-Decision Booklet on Labour Migration for Health Workers 01 March 2019.

19 <https://www.bwint.org/cms/news-72/global-unions-forum-on-migration-in-morocco-1244> December 2018.

20 The Joint Agreement was not featured on TUAC's website. See: [Global Unions Agree Joint Principles on Temporary Labour Agencies](http://www.iuf.org/w/?q=node/413) <http://www.iuf.org/w/?q=node/413> 15 June 2010.

21 "Abuses of migrant workers supplied by agencies are all too common. They include the denial of trade union and other human rights, human trafficking, confiscation of passports, deceptive practices with respect to wages and working conditions, and the denial of legal redress in the countries in which they work." (<http://www.iuf.org/w/?q=node/413>)

22 C097 - Migration for Employment Convention (Revised), 1949 (No. 97), C143 - Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143).

23 See Wickramasekara 2011: 80-81 for details of the agreements.

5. Temporary and Circular Migration: issues and research evidence

It would be unwarranted to generalise across the labour experiences of temporary and circular migrant workers, whose working conditions, level of 'skill' and remuneration span a wide spectrum within and between sectors around the world. However, the working conditions of temporary/circular migrants share much in common to migrants more generally. They are at risk of discrimination and exploitation during the migration process, as well as during settlement in the destination country including in employment and wider social structures. This has been well documented in academic research and trade union literatures (see for example ITUC Global Rights Index 2019) and it informs ITUC's Frontline Campaign for a universal labour protection floor available to all on the basis of equality (ITUC 2019/20).

However, there are distinct challenges when it comes to working conditions of temporary and circular labour migrants. Such migrants are much more susceptible to abusive treatment and sub-standard working conditions than long-term migrants who enjoy rights of permanency which affords them a firm(er) legal basis for settlement and access to a wide range of social support infrastructures. Global unions are alert to the adverse impacts of recourse to temporary migration on working conditions and rights. As Sharan Burrow's (President, ITUC) address to the High-Level Dialogue of the United Nations General Assembly on International Migration and Development (14-15 September 2006) highlighted:

Without freedom of employment and guarantees of equal treatment, temporary migration is potentially a 21st century face of labour enslavement the world has struggled to rid itself of.

(cited in IUF 2008: 10).

In 2011 ITUC issued a policy paper on Migration: A decent work issue as an agenda item at ITUC General Council, which cogently summed up the objections to circular migration programmes, stating that:

Problems associated with circular migration programmes are among the most exploitative of any migration arrangements.

Firstly, they often limit the fundamental rights of migrants to join and form a trade union. Even in the limited number of programmes in which these rights are granted, in practice collective bargaining is almost impossible as the working conditions are defined and imposed on the migrants prior to departure.

Secondly, the wages tend to be lower than the ones paid to local workers, access to social security schemes is often limited and training options are non-existent. Workers with lower skill levels are also the ones granted the poorer working and living conditions.

Thirdly, in the countries of destination, migrants are generally not allowed to change jobs or employers, to freely choose the time of return, or to enjoy the right to family reunification. They rarely receive pay for overtime work, often a requirement of the employment. In numerous cases, severe violations of rights have been reported such as the withholding of identity documents, the prohibition of free circulation outside the dormitory, non-payment of wages or abusive reduction of paid salaries to re-pay food, accommodation (including unsafe, overcrowded, or unhygienic accommodation) or agency fees.

Lastly, these programmes are often used by employers to avoid unionisation of the workforce, ensure maximal flexibility in hiring and firing and keep the labour costs at the lowest levels.

(pp. 7-8)²⁴

Points from GUF-commissioned studies that in some way explicitly attend to temporary and/or circular migration impacts are summarily set out below.

(a) The link between low quality jobs, the use of migrant labour – including the use of temporary contracts – and the production of dependency and poverty

The IUF's study of agricultural and plantation workers (*Harvesting Hunger Plantation Workers and the Right to Food*, 2014) highlights the preponderance of low quality jobs in this sector, characterised by harsh working environments, 'social distance' between management, supervisors and workers. Outsourcing of work by agricultural employers (often large companies) has reduced permanent core workforces and, with it, levels of labour protection, and increased the use of casual and/or migrant labour by contractors. Migrants constitute an important part of the plantation workforce in many regions, and whole crop sectors depend on migrant workers, who face discrimination, abusive employer practices and insalubrious living and working conditions. These extend beyond lower wages than the legal minimum and gender inequality in wages, to also include a lack of maternity protection for women workers and a lack of social security protection (including disability payments) due to the casual, temporary or seasonal nature of their employment (p. 11). "The described forms of discrimination can either result in reduced incomes, or in job losses if women or migrants protest against their discrimination" (p. 12).

The study also highlights how employers' business model viz their workforce creates poverty and ill-health (including the spread of communicable diseases) due to poor housing, sanitary and dietary conditions.

▀▀ Casual workers are rarely provided with housing. Many are migrants who live in shanties near the plantation estates without even the most basic sanitary facilities. Labour authorities often do not have the legal basis for inspecting housing and living conditions or, if regulation exists, the labour inspection visits are infrequent or absent.

(IUF 2014, p. 13).

24 An ITUC flyer based on such arguments states: "Trade unions warn against the danger of temporary and circular migration programmes becoming a permanent trend. Temporary migration must not be used as a way to lower wages and working conditions or fulfil permanent jobs in countries of destination, or as a way to deplete countries of origin of their human resources. Temporary and circular migration programmes that violate human and workers' rights and don't respect the principle of equal treatment must be opposed" (ITUC 2012: 2).

Conditions of employment are generally insecure and the labour contractors frequently abuse their authority over the workers by asking for commissions, over-charging for transport, housing and food, holding back wages.

(IUF 2014, pp. 9-10).

Such practices, in conjunction with low wages, leads to poverty, indebtedness (workers take out loans to feed their families and send their children to school). Hunger is common – either because wages are insufficient to purchase adequate food in the local market (which the plantation owner may control) or because the lunches given by the plantation owner/employer to the workers are poor quality.

These abuses of worker dignity, the production of ill-health and social and political isolation can be linked to how the organisation of plantation production systems creates dependency of workers on employers/plantation owners. The latter not only own/control the land, but also local amenities (housing, water supplies, electricity, the company shop, credit, schools, health care facilities, transport) needed by workers. This dependency is compounded by the absence of infrastructure, services, markets and transport in remote areas where plantations are sited, as well as by prohibition on joining a union.

(b) The link between the use of temporary/casual (migrant) labour and employer-generated harms to the health of the workforce, babies and children, the community and the environment

An IUF report (2008) on the risks, hazards and harms experienced by migrant workers highlighted that “agriculture is one of the three most hazardous industries along construction and mining” (p.14) and that “Migrant workers are particularly at risk, being in unstable working relationships with employers who are less likely to take responsibility for providing a safe and healthy workplace. Those employed through shady or criminal labour agents are at extreme risk” (p. 14). It details that:

■ The use of chemical pesticides and fungicides in agriculture is a major health hazard [leading to 40,000 deaths per year]. The most common impacts of toxic chemicals are skin diseases, respiratory infections and nervous problems. Women are especially vulnerable to the effects of chemicals on their ability to get pregnant and give birth to healthy babies. Migrant workers are less likely than local workers to be provided with proper protective clothing and so they suffer more from the pesticides and fungicides to which they are exposed.

Being imposed to lift and carry very heavy weights and the increasing pace of work are other work hazard faced by many migrant workers. Few are provided with the necessary handling equipment; or, if they are, are not trained in a language they can understand on how to operate it. So they suffer from muscle strain and chronic back pain. For pregnant women, there is the extra risk of miscarriage. The increasing pace of work, particularly in food processing factories, is causing widespread problems of repetition strain injury.

(IUF 2008: 15).

A 2015 IUF research report additionally highlighted threats to health and safety at work and the wider community from the widespread use of casual (read: migrant) labour in plantations and farms in Africa. The workforce experiences significant hazards at the work (for which casual labour is often not adequately trained to mitigate or is protected against).

Occupational health hazards are associated with environmental hazards, affecting the wider community and increasing public health risks. "It is more common to see casual workers using equipment or applying pesticides with bare hands" (IUF 2015: 48). This is compounded by casual/temporary workers often being excluded from legal protections and prohibited from joining the union or benefiting from the worker protections won by the union (IUF 2015). It is also compounded by the fact that:

■ Many migrants do not have access to the public health systems of their destination countries. If they get sick, they may not be entitled to healthcare, or they may not be able to access it because they don't know how to or they have become undocumented.

(IUF 2008: 16).

The exclusion of temporary labour migrants from public health systems parallels their exclusion from social security and wider social protection coverage, and can increase workers' vulnerability to accepting informal payments from employers as a pay-off when they become sick, injured or disabled. Such payments are not likely to fully compensate for the lifetime risks to their livelihood and income security.

■ Migrant workers are typically recruited on short-term contracts and paid cash-in-hand. They barely exist on labour registers and have little social protection. Employers side-step their duties to provide benefits such as holiday or sickness pay, social insurance contributions, maternity provision, and so on. This means employers get more value out of these workers at lower cost. It lowers working standards for everyone.

Those costs are inevitably eventually borne by public services in the form of health, rehabilitative, or other forms of remedial care from social protection and health coverage leaves consumers and citizens unaware of the real social, health and economic costs of the products they buy and consume. Employer transparency would help build trust in them, and forge a basis on which to work productively with consumer-led health, labour and environmental campaigns.

At another level, IUF report HIV/AIDS-specific health issues in relation to migrant workers – who do not have the same rights of access to health care, travel with family or employment protection – and public health:

■ The disease has very seriously implications for migrant workers. Those discovered as infected are usually not accepted into host countries. But most of all, **migrants to other countries are not usually allowed to travel with their partners; so they develop new, often casual relationships and risk infection; they may be so poorly paid that they do not have money to buy condoms. ...** Being found out as infected with HIV/Aids can mean they will be abandoned by their labour agent or expelled from the host country and so lose their job, even though this contravenes international labour standards. Many migrant workers return home with the infection, increasing the spread of the disease.

(IUF 2008: 16; emphases added).

IUF reports on employer practices in the agricultural and food sectors consistently highlight that employment of workers as ‘seasonal’ is common (even where the seasons do not affect the work), and that this is a key way by which employers side-step their employment responsibilities as well as their responsibilities to the wider community and environmental safety. Importantly, the IUF highlight that it is not only workers, the community and environment who are harmed by employer practices, and that:

■ **Casualised employment also runs very high risks for employers in terms of occupational health and safety. Costly accidents are far more likely to happen where there is a high turnover of workers who are untrained.**

(IUF 2015, p. 48).

Public health and ecological degradation affects the health, welfare, and livelihoods of many others beyond the immediate production site - farmers, businesses, workers, families, children and communities. An IUF-supported report by UNIA (2018) in relation to the hotel industry also highlighted the health risks to workers and to consumers/customers of wage-dumping practices associated with outsourcing. The study of hotel housekeepers in a Swiss hotel, an occupation in which migrant workforces on temporary contracts predominate (see also sexual harassment, below), amply illustrated this health risk. For example:

■ **The price pressure does not stop with working conditions, but also means that hotel housekeepers have to work with the wrong cleaning materials, because they are cheaper. Staff again and again tell of health risks in the workplace, because of a lack of gloves and they are constantly forced to use caustic and volatile cleaning materials, which are only permitted for the bathroom areas, for the whole room. Negligent use of cleaning materials endangers not only the housekeepers’ health but also that of the guests.**

(UNIA 2018, p. 6).

(c) The link between temporary migration, casual labour and sexual harassment

Workers' organisations studies highlight gender-specific forms of abuse, not only in the denial of maternity protection as reported by IUF (2014) (see above) but also in the form of sexual harassment and violence. "Migrant workers are also very vulnerable to violence, including sexual violence. This applies to both men and women, but women are more at risk" (IUF 2008: 15).

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- ▀▀ Migrant workers are vulnerable on the journey, where they work, and where they stay; they are dependent on the agent that finds them work, and at extreme risk if that agent turns out to be a predator or a trafficker linked to the sex trade; if they are 'undocumented' (do not have the correct immigration/ work permit), migrant women cannot appeal for protection from the authorities. Women do not take sexual harassment lightly, and nor should men, particularly in the union movement. Sexual harassment in the workplace is a union issue, not a women's issue, nor a 'personal' issue.

(From 'All for One = One for All: A gender equality guide for trade unionists in the agriculture, food, hotel and catering sectors', IUF, June 2007, cited in IUF (2008, p. 15).

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- ▀▀ Many migrant workers have to live in extremely poor conditions: in decrepit old buildings, shacks, broken down caravans, and so on. Sometimes the housing does not meet even their basic needs – there is no running water or proper sanitation. Rooms are often overcrowded and there is no privacy. Overcrowding also increases the vulnerability of women and children to sexual abuse, from other workers as well as gangmasters. Where and how women and child migrants are housed is important for their safety and security

(IUF 2008: 17).

The message that sexual harassment is not just a women's issue but a union and an employer issue has formed the basis of labour campaigns, which, in turn, influenced initiatives with employers. An extract from one such initiative is provided below:

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- ▀▀ Sexual harassment can cause severe distress and ill health and can lead to the victim giving up her/his job. Sexual harassment is a universal problem. Women workers, particularly those in plantations, export processing zones, contingent, temporary and/or migrant workers can be particularly vulnerable.

(p. 1, IUF-Industrial-LL-Unilever joint statement on sexual harassment, in *No place for sexual harassment at Unilever*, IUF/UITA/IUL 2017).

IUF campaigning on sexual harassment also extends to the hotel/hospitality industry in which migrant workers and casual workforces predominate (ILO: Migrant workers are essential for the international hotel industry (<http://www.iuf.org/w/?q=node/1836>)). A UNIA (2018) report on working conditions in the Zurich branch of the Marriott international hotel group highlighted the prevalence of sexual harassment experienced by the workforce, and how “the cascade of (property) owners, operators, outsourced entities and subcontractors [in the organisation and management of employees] is increasingly reminiscent of the subcontractor supply chains and wage-dumping arrangements in the construction industry, with the resulting consequences for employees” (p. 9). Workers’ reports of sexual harassment by hotel guests and management’s response to them contradicts the ‘fair employer’ brand of the Marriott chain. Unions’ understanding of complex ownership and management structures in large multinational corporates is essential to improved working conditions of all workers, including temporary migrant workers, in casualised workforces.

6. Spotlight on the health sector²⁵

Discourses and practices of TCM have long been a feature of the health sector. Their significance has been recognised by ILO, whose Nursing Personnel Recommendation 1977 incorporates the principle of conditional and temporary migration, stating that although organised exchange programmes should provide appropriate financial support to the participants, such support may be conditional upon a nurse undertaking to return to their country within a reasonable time and to work there for a specified minimum period in a job corresponding to the newly acquired qualifications, on terms at least equal to those applicable to other nationals.

Since the early 2000s TCM has become increasingly prevalent in the health sector, where it is being advocated by some policy actors as a cornerstone of ‘ethical recruitment’, as a means of combating ‘brain drain’ and facilitating ‘brain gain’ and ‘brain circulation’, and thus as a desirable contribution to strengthening health services. Such arguments have been floating around for some time, aided by the rise of the migration-development discourse, initially in the context of harnessing the potential of international trade agreements in support of temporary migration to enhance ‘development dividends’ to source countries, more recently in relation to bilateral labour agreements. Then, as now, a major concern is that without checks on recruitment and significant compensatory measures, such agreements become little more than agreements to provide quotas of temporary health workers with inferior working conditions and rights and without any of the corresponding development gains to source countries that could help realise universal health coverage.

Temporary and circular labour migration is actively promoted by many high-income destination countries, which regard it as a ‘solution’ to chronic problems of under-resourced health services and labour forces. The shift in policy discourse towards TCM in this sector is presently associated with the growing use of bilateral labour migration agreements (BLMAs). Dhillon et al. (2010) identify a ‘new’, 21st century approach to BLMAs relating to health worker migration, which seeks to enable ‘development friendly’ migration where the benefits and challenges of migration gain primacy alongside a focus on facilitating labour *mobility* while ensuring social protection for migrant health workers. Central to this ‘generation’ of bilateral agreements is the concept of ‘shared responsibility’. This places more emphasis on engaging with the various concerns of source countries and identifying the responsibilities of those countries and workers themselves (ibid.: 19). However, this has been accompanied by a de-emphasis on migration leading to permanent settlement and a greater emphasis on TCM. Dhillon et al argue this can mitigate the adverse consequences of health worker migration for source countries while maximising development benefits resulting from continued emigration because it institutes an expectation of return

25 This section draws very heavily on academic research published in Yeates and Pillinger (2019).

flows to the source country. Exemplars of such agreements include those between France-Senegal, Spain-Morocco and with other West African states, Philippines-Bahrain²⁶, India-Denmark (ibid: 21).

Bilateral agreements can indeed be an important mechanism to protect the rights of migrant workers and mitigate the negative impacts of outward migration. However, despite the growth of BLMAs promoting TCM, there is no evidence that these forms of migration are preferred by health workers – or, for that matter, by employers²⁷ – or that they foster migration of the kind where there is continued connection with, and integration in, source and destination countries (Newland 2009). Instead, TCM restricts migration choices and the right to enjoy rights of permanent settlement in the country of employment (Wickramasekara 2011). PSI (2010) and ITUC (2011) have been highly critical of TCM programmes as they can exacerbate precarious and exploitative work and diminish workers' rights to training, career development, decent work, social protection and family reunification. The boundaries between circular migration and temporary migration programmes are hard to distinguish, such that circular migration programmes are little more than temporary labour programmes in a 'kilt'.

PSI has been a highly active and notable contributor to international policy debates about TCM in the health sector. Its initial position (PSI 2010), when circular and temporary migration were first promoted as a "triple win" solution to chronic problems in the health workforce by its proponents, mainly by the EU and OECD, was that circular and temporary labour programmes are *only* sustainable if they promote the development of skills and human resources necessary to strengthen public service delivery in both source and destination countries, and facilitate knowledge transfer and 'brain gain' in low-income countries. To realise this, a range of mechanisms and measures would be needed, including: in-built mechanisms to build the capacity of health workers and the health sector by, for example, reducing outflows of health workers from rural areas, reducing attrition, and introducing incentives and policies in place to retain highly-skilled workers; and instituting concrete mechanisms to support 'brain gain' and knowledge transfer, research and training between source and destination countries.

Over time, supported by evidence and the work of PSI's affiliates in the health sector, it has become clear that TCM cannot meet the *sustainability* criteria. To be sure, there are models of BLMA 'good practice', i.e. in which equality of treatment is embedded²⁸ or which are used as a basis for the recognition of skills and qualifications.²⁹ There are also examples of cooperation agreements for training, research and development that include provision of training.³⁰ BLMAs that meet the standards set out by PSI are too few and far between, however. The majority of BLMAs does not incorporate rights to decent working conditions and social protection equal to those enjoyed by nationals of the countries to which they migrate. Also, BLMA provisions for training and knowledge exchange amount to little more than the on-the-job induction and training that all employees can routinely expect (Yeates and Pillinger 2018, 2019).

The research findings of Yeates and Pillinger's (2018, 2019) major study extend those of Wismar et al (2011) who found no examples of compensation schemes established with the explicit purpose of mitigating the loss of investment in training and human resources in source countries. Yeates and Pillinger concluded that most bilateral agreements in this sector are little more than short term agreements to provide quotas of health workers for temporary or circular migration and are devoid of reciprocal arrangements to compensate source countries for loss of health workers. They principally benefit advanced industrialised

26 The Filipino-Bahraini agreement was never implemented.

27 Health employers want to retain skilled staff with experience and who have been trained. As one respondent in Yeates and Pillinger's (2013) study stated: "Short-term placements are not necessarily of benefit to employers who will need to reorientate and train health workers, including ensuring that they are language proficient and familiar with a country's culture and mores in a health care setting. This picture is very different for unskilled workers who engage in seasonal agricultural work, for which training is not required."

28 Equality of treatment has been embedded in some agreements, as in the example of an agreement between Spain and the Philippines which provides for nurses and other highly-skilled Filipino workers to work in Spain with the same protection and rights as Spanish workers.

29 For example, a UK-Spain agreement gives recognition to Spanish nurses' skills in the UK.

30 For South African doctors in Cuba, Iran and Tunisia. This agreement covers the temporary recruitment of doctors and qualified health personnel from Cuba, Iran and Tunisia to fill labour shortages in the health sector in South Africa.

recruiting countries. Such agreements are, in their present form, seen to be flawed as means of achieving global universal health coverage and decent work.

It is for such reasons that PSI does not support TCM in the health sector. This consolidation took place as part of ITUC's position paper on Migration (ITUC 2011: 9). PSI continues to oppose TCM in the health sector.³¹

Bilateral labour agreements promoting TCM have become embedded in other international initiatives. Three examples of this are briefly outlined below.

(i) EU Mobility Partnerships

EU Mobility partnerships with proximate 'third countries' have become a much-used way for addressing health workforce shortages, and many of these incorporate the principle of TCM. They are in fact bilateral agreements in the sense that the EU acts as a single state partner with another one. Also, note use of the term mobility rather than migration. Mobility partnerships are heralded as promoting comprehensive measures for cooperation, transparency and ethical recruitment (Dhillon et al. 2010; Makulec 2014), while strengthening measures taken by the 'third country' to manage labour migration. So far, several health sector-specific mobility partnerships have been concluded (e.g. with Morocco, Armenia, Georgia, Moldova, Cape Verde). Under the EU–Moldova Mobility Partnership³², WHO plays a role in implementing a project on the 'efficient management of the health care staff of the Republic of Moldova', with a focus on minimising the negative impact of the migration of healthcare staff through the promotion of programmes of circular migration schemes. Support for the partnership comes from numerous EU countries and international organisations. This author could not find documentary evidence of the involvement of workers' organisations in the development of EU Mobility Partnerships.

(ii) International Medical Graduate Initiative

Cited as good practice by WHO is the International Medical Graduate (IMG) Training Initiative adopted by the Health and Safety Executive and the Forum of Irish Postgraduate Medical Training Bodies (2014). The Initiative permits overseas doctors to undergo postgraduate medical training in the Irish health service over a fixed period of time. The objective is to enhance clinicians' access to training that is not available in their home countries. The population of interest is 'developing' countries. Although these are laudable initiatives, the footprint of the principles of TCM is evident. Most obviously, the recruits are training in Ireland while also contributing to the 'the overall productivity and effectiveness of healthcare services provided in Ireland' (HSE/Forum of Irish Postgraduate Medical Training Bodies 2014:4), usually for a period two years after which they are expected to return to the source country.³³ During this time, they receive not a wage, but an allowance, and cannot accrue any rights of residency or settlement. Their family has no right to join them in Ireland, and any children they bear during this time will not have Irish citizenship. In this case, bilateral agreements have combined with graduate training programmes that can serve to cover health workforce shortages on a temporary basis. However, this approach fails to deal with the long-term sustainability of health systems to ensure adequate staffing levels in both source and destination countries (Yeates and Pillinger 2019). Of note is the absence of a role for health sector trade unions in the governance of the Initiative. The IMG Training Initiative is a partnering arrangement between postgraduate training/educational bodies (effectively, employers) and governments, in Ireland and selected countries of interest overseas.

³¹ This point was clarified by Genevieve Gencianos during the course of research for this paper.

³² The strong links between the Development discourse and the promotion of circular migration are illustrated in the signatory text of this partnership: 'The Mobility Partnership will have the purpose of facilitating legal migration including circular and temporary migration, in particular for development purposes, within the limits of the respective competences of the Signatories and taking into account their labour market and socio-economic situation...' (Council of the European Union 2008: 2).

³³ The MoU states that: 'The period of clinical training that will be provided under the IMG Training Initiative is ordinarily 24 months, after which the overseas doctors will be expected to return to their country of origin. The Initiative is aimed primarily at doctors from countries with less developed health sectors and is not intended to lead to settlement in Ireland' (p. 2, IMG Training Initiative MoU 2014: <https://www.who.int/hrh/migration/Item14-Ireland-IMGTFrameworkAgreementFINAL150114-MOU.pdf>).

(iii) Global Skills Partnerships³⁴

GSPs have emerged as a major proposal for 'technical training in a mobile world' that aims to realise ethical recruitment in the health sector within the framework of the 'triple-win' approach of mutual benefit. GSPs can potentially cover sectors other than health, but, to date, they have been most developed in the context of the health sector, where they seem to align with some aspects of the WHO Global Code of Practice on the Ethical Recruitment of Health Personnel (WHO 2010).³⁵ Incorporated into the Global Compact on SOR Migration (Objective 18),

■ [a] GSP is an up-front agreement between employers and/or governments in destination countries and professional training centres in origin countries. These parties agree on a practical and equitable way for the benefits of migrants' professional service at the destination to finance training at the origin – training for both migrants and non-migrants. Such an agreement allows mutual gains by taking advantage of large international differences in both professional earnings and training costs.

(Clemens 2017:1).

The idea is that GSPs would be formed on the basis of bilateral agreements where destination country governments directly fund training and skills development programmes prior to migration. This is said to help avoid the loss of human resources (and the financial resources invested in them) from source countries when a trained health worker migrates to work abroad permanently. As Clemens put it: "Skilled migration can thus create enormous economic value. Global Skill Partnerships share that value in a way that origins, destinations, and migrants can agree to" (Clemens 2015: 1). For this value to be shared among stakeholders, it is argued that this technical training needs to be underpinned by TCM.

Importantly, though, GSPs aim to go further than existing bilateral agreements and the provisions in the WHO Global Code of Practice on the Ethical Recruitment of Health Personnel in that they would specify destination country funding for concrete training and placement targets *pre-departure*, while also contributing to general training of health workers in source countries. In theory, all participants would receive high-quality training for occupations in demand, regardless of their decision to migrate, stay or return. Countries of origin would benefit from being able to train more highly skilled health workers. Employers in recruiting countries would gain access to a larger pool of workers with sought-after skills.

Both PSI and ITUC strongly oppose Clemens' model of GSPs. There are many unanswered questions about how GSPs will achieve the highly complex tasks of actually contributing to a net creation of health workers in the source country, *and* mitigating the effects of health worker migration while also proving to be an effective mechanism for addressing health workforce availability. For GSPs to work effectively, they would, amongst other things, require robust governance mechanisms including trade union participation to ensure accountability, as well as new funding strategies and significant investment by destination countries.

³⁴ This sub-section draws heavily on materials and analysis published as Yeates and Pillinger (2019).


³⁵ Notably para 5.2: 'Member States should use this Code as a guide when entering into bilateral, and/or regional and/or multilateral arrangements, to promote international cooperation and coordination on international recruitment of health personnel. Such arrangements should take into account the needs of developing countries and countries with economies in transition through the adoption of appropriate measures. Such measures may include...support for capacity building in the development of appropriate regulatory frameworks, *access to specialized training, technology and skills transfers.*' (emphasis added).

A major question is how they will uphold the WHO's Code's commitment that bilateral agreements will ensure ethical recruitment and rights-based approaches to migration. If GSPs are not to undermine the WHO Global Code they will need to be fully consistent with the normative framework on migration and labour rights and other principles on fair recruitment established by ILO.

There is a concern that GSPs may further embed temporary and circular health worker-migration schemes (and quotas therein) at the expense of adherence to UN and ILO rights-based approaches to migration. The concern is that health workers will be tied to an employer and will have limited rights to move jobs. This is matched by concerns about the status of GSP trainees who, through illness, loss of job, work exploitation or other factors, break a contract of employment and leave their job. From a health systems perspective, there is also a great deal of scope for much more clarity about how they will contribute to health systems sustainability. Potentially, they will amount to short-term attempts to fill workforce shortages,³⁶ rather than underpin long-term, sustained efforts to strengthen health systems in source countries. Also, by directing attention to training quotas of skilled health workers for international migration, they will likely distract from the provision of adequate resources and ensuring education and training capacity for quality health care services in the source country (Yeates and Pillinger 2019).

PSI has prioritised GSPs as a major labour issue in the health sector. PSI's position on GSPs on Migration is that little can be expected from GSPs given that the dominant discourse is financial incentives, employability, skills transfer and mobility rather than health systems sustainability, health equity, decent work and social protection. Its position is that the only reliable way forward for GSPs is for their implementation to be on a government-to-government basis carried out via public-public partnerships and with the full engagement of trade unions (Gencianos 2018). Yeates and Pillinger (2019) extended PSI's recommendation, arguing that it would also be important to institute robust scrutiny and accountability mechanisms within the implementation instruments governing the partnership. For these to be capable of holding participating governments (and employers) in the partnership to account, such mechanisms would need to strongly adhere to the principle of *accessibility* by all key stakeholders (workers' organisations and others) equipped with the resources to fully and effectively participate in them.

An emerging approach to GSPs that seems to begin to address this point is the subject of discussion at international level. The ILO, IOM and UNESCO, together with international employers' and workers' organisations (International Organisation of Employers (IOE); ITUC) announced in December 2018 that GSPs on Migration can be appropriate responses to 'significant opportunities to foster development in countries of origin, transit and destination, improve livelihoods, develop skills, spark innovation, match talents, fill skills shortages and allow for mutual learning' (ILO/IOM/UNESCO 2018: 1). These organisations also announced that they would be:

 **Joining forces to forge a Global Skills Partnership. This will mobilise their constituencies, pool their expertise, build platforms to assist national and migrant workers, including those who return, maximize synergies and leverage comparative advantages. The Global Skills Partnership will pay particular attention to low- and medium-skilled migrants and will be underpinned by skills partnerships at local, national, sub-regional and regional level.**

(ILO/IOM/UNESCO, 2018 *ibid*: 1).

³⁶ Van de Pas and Mans (2018) refer to this risk as the 'uber-isation of health labour'.

As pointed out to the ILO at the time, ITUC has a more nuanced view on GSPs, aligned to the views of PSI (see the Workers' Group's comments on skills and migration during the 2017 ILC discussion, for a more rounded reflection of the ITUC's views). As ITUC is a member of this platform, it is absolutely right that it continues to be 'at the table' as an equal partner in all to discussions about GSPs.

More generally, much **more research and reflective thinking is needed about TCM in relation to the health and -related sectors**. Much discussion has revolved around 'highly-skilled' health sector workers, but there is also scope for consideration of 'lower-skilled' workers in health-related jobs, such as social care – a sector in which labour exploitation is rife and whose workforce is more casualised and less well-organised than clinicians in highly-regulated capital-intensive sites. Health may be a frontier sector as far as GSPs on Migration is concerned, but the applicability of concerns that PSI has raised in relation to high-skilled health workers could be usefully examined by workers' organisations in relation to other sectors and 'low' and 'medium' skilled workers. One focus in this regard is the extension of platform work into the care sector, an issue which urgently requires research. There is scope for further dialogue and cooperation among GUFs on this and a range of other matters in order to proactively shape the terms of debate in this field at an early stage.

7. Conclusion

The widespread employment of migrant workers on a temporary basis has been a long-standing focus of research and campaigns by workers' organisations worldwide. Surveying recent union engagement with, and initiatives on, TCM, this paper aims to help surface evidence about the social and economic costs borne by workers, businesses, families, children, communities of employer behaviour and business models founded on temporary and casual labour contracts, amongst which international migrants are disproportionately represented. There is no claim as to the all-encompassing or definitive nature of the evidence collated and presented here. It should be read in conjunction with the Part II by Nora Wintour, and in light of the rudimentary state of knowledge of this field. On this basis, below are identified summary findings:

- Union engagement with TCM reflect the widespread use of temporary migration and the promulgation of TCM programmes. The degree of explicit engagement with TCM issues is uneven across the global unions, as is the intensity of that engagement. Not all GUF initiatives that are relevant to migrants are solely or explicitly addressed to TCM.
- GUFs do not support TCM programmes. This is because the use of temporary and circular migrant labour is associated with limitations on workers' rights, wages, working conditions and wider social rights, and thus with adverse impacts on labour and social standards. Predatory employer practices viz a viz temporary migrant workers are a downward pressure on working and living conditions.
- A significant contribution from GUFs' engagement with this area has been to highlight important health and ecological harms associated with the use of temporary migrant labour. These include unsafe personal and public health risks and ecological degradation that threaten livelihoods not just of workers but also the viability of continued production and business.
- Examples of GUF activity include: commissioned research; extended blogs tracking issues over time; meetings, rallies and campaigns; the creation of collaborative networks and resources; global framework agreements; bilateral agreements linking source and destination country unions.
- PSI's pioneering work to elaborate an alternative social model for GSPs shows that universal health, labour and social protection coverage on the basis of equality can be achieved on an interlocked basis. This is the basis of the social contract demands of the ITUC and the international labour movement more widely, and has been the basis of its demands around the rights of migrant workers, as for all workers. It is a social model around which to actively pursue further dialogue and cooperation among GUFs and with other allied partners.

The buoyancy of proposals and initiatives from international actors to harness the apparent benefits of TCM for source and destination countries suggests a challenging path ahead for all those committed to universal decent work standards available equally everywhere to all. There are many issues ahead if TCM proposals and initiatives are to protect fundamental decent work standards for all equally and in every country. The entrenchment and expansion of TCM programmes needs union-led vigilance across a wide range of sectors and dialogue with like-minded stakeholders. Global unions have a prime role in ensuring that migration policies and agreements adequately recognise migrant workers' skills, portability of social security benefits, access to social protection, protection against exploitation and improved work conditions, so that migration can take place in 'conditions of freedom, dignity, equity and security' and decent work.

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Part II.

Trade unions' assessment of the scope, use and effects of circular and temporary labour migration and their related policies and programmes

Nora Wintour

► Executive summary

This study brings together information concerning trade unions policies and programmes on circular and temporary labour migration schemes with trade unions' assessment of the scope, use and effects of these schemes. The study is based on desk research together with personal interviews with key trade union officers responsible for migrant workers' issues at headquarters and in some instances at regional level of the global unions. The study covers those global unions and some national unions with the most significant programmes of work on labour migration. The main sectors covered by the study include the public sector, in particular education and health services, construction, food and agriculture, hotels, domestic workers and commerce and other services. The research was conducted over the period from November 2019 to February 2020. It reviews policies and programmes, recent research or case studies and union initiatives to organise and advocate for the rights of migrant workers. The study is illustrative rather than exhaustive and seeks to provide an overview of the policy positions and the range of programmes and good practice currently in place.

Over the last decade, trade unions have increasingly addressed the issue of temporary and circular migration. The Council of Global Unions (CGU) formed a Task Force on Migration in 2008, which has focused on a rights-based approach to migration. It has argued consistently that the approach to labour migration should focus on the human rights of workers and not as a goal or enabler for development. Unions have also emphasised that all workers have rights, regardless of their migration status.

Trade unions have criticised the failure of most regional economic communities (RECs) to establish effective tripartite social dialogue mechanisms on migration issues. The European Union has the most developed labour migration framework, and, according to trade unions,

recent good practice includes a revised Posting of Workers Directive and the establishment of a European Labour Authority with a dispute resolution mechanism. However, other regional cooperation agreements are much less regulated and social dialogue mechanisms are often weak.

Trade unions express serious reservations about the proliferation of bilateral labour migration agreements (BLMAs) and other protocols over the last two decades, many of which are overlapping and inconsistent. They are highly critical of the lack of transparency in the way these agreements are negotiated and the gaps in the protection of workers' rights that are often inherent in such schemes and their gendered impacts. They consider that such schemes have contributed to a general erosion of workers' ability to exercise their rights, to join trade unions and bargain collectively.

The ITUC and a number of global unions have adopted campaigns and programmes to organise, service and advocate for the rights of migrant workers and on ethical recruitment. Generally there are very few good practices concerning social partner engagement in BLMAs, with the notable exception of the 'Triple Win' programme for recruitment of nurses to Germany from the Philippines. Trade unions report very few good practices in terms of national migration governance and criticise the lack of coordination among government departments which makes effective partnerships with trade unions and civil society challenging.

Bipartite and multi-lateral union-to-union agreements to organise and advocate on behalf of migrant workers have proven to be a good strategy to encourage unions in receiving countries to organise and defend migrant workers and to provide various services, such as pre-departure briefings. Unions have also established website information portals and helplines.

Over the last decade, trade unions have also commissioned or carried out a range of research studies, for example on teacher mobility, participatory surveys on health workers' migration and on the BLMAs signed by the Gulf Cooperation Council states, with a particular focus on domestic workers. Many of these studies highlight how vulnerable migrant workers are to abuse and exploitation.

Trade unions also highlight the increasing use of private recruitment agencies rather than public employment services. They consider that private recruitment agencies should be regulated through mandatory, enforceable mechanisms rather than voluntary programmes and promote the ILO's *'General Principles and Operational Guidelines on Fair Recruitment'*. There are a number of initiatives, such as the ITUC's 'Recruitment Advisor' Platform, designed to promote fair recruitment. In the health services and education, trade unions have engaged to varying extents in the drafting and monitoring of ethical recruitment codes. A future challenge is to strengthen the regulation and ethical recruitment of the home-care sector.

The study concludes with a summary of the policy positions of the trade unions concerning circular and temporary forms of migration and a set of recommendations focusing on the equal application of legal and administrative provisions for all workers, whether migrant workers or not. They reaffirm the relevance of the ILO Conventions 97 and 143 and accompanying recommendations on migrant workers. They call for institutionalised social dialogue on labour migration governance and that RECs and BLMAs should include a standard procedure for consultation with social partners with a monitoring and follow-up mechanism. Trade unions in the health sector do not consider any model of circular or temporary labour migration scheme as a viable solution given the permanent nature of health care work and the global shortage of health care workers.

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► Acronyms

AFL-CIO	American Federation of Labor & Congress of Industrial Organizations (USA)
AFT	American Federation of Teachers (USA)
AEC	ASEAN Economic Community
ATUMNET	African Trade Unions Migration Network
ASEAN	Association of Southeast Asian Nations
ASETUC	ASEAN Services Employees Trade Union Council
AU	African Union
BLMA	Bilateral Labour Migration Agreement
BWI	Building and Wood Workers' International
CGU	Council of Global Unions
DOLE	Department of Labor and Employment (Philippines)
EESC	European Economic and Social Committee
EFBWW	European Federation of Building and Wood Workers
EFFAT	European Federation of Food, Agriculture and Tourism Trade Unions
EI	Education International
EIAP	Education International Asia Pacific Office
ELA	European Labour Authority
EMA	Emigration Management Authority (India)
EPA	Economic Partnership Agreement
EPS	Employment Permit Scheme
EPSU	European Public Service Union
ETF	European Transport Workers' Federation
ETUC	European Trade Union Confederation
EU	European Union
FLOC	Farm Labor Organizing Committee (USA)
GCC	Gulf Cooperation Council
GFMD	Global Forum on Migration and Development
GSP	Global Skills Partnership
ILO	International Labour Organisation
ITUC	International Trade Union Confederation
IUF	International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations
KNUT	Kenyan National Union of Teachers
MOU	Memorandum of Understanding
NEA	National Education Association (USA)
NGG	German Food Workers' Union
NHS	National Health Service (UK)
NUT	Nigerian Union of Teachers
OECD	Organisation for Economic Co-operation and Development
POEA	Philippines Overseas Employment Administration

PSI	Public Services International
PSLINK	Public Services Labor Independent Confederation (Philippines)
REC	Regional Economic Commission
SADC	Southern African Development Community
SDG	Sustainable Development Goal
SEIU	Service Employees International Union (USA)
SMP-NATOW	National Alliance of Teacher and Office Workers (Philippines)
UFCW	United Food and Commercial Workers (USA)
UFW	United Farm Workers (USA)
UN DESA	United Nations Department of Economic and Social Affairs
UNESCO	United National Educational, Scientific and Cultural Organization
UNI	Union Network International
WHO	World Health Organization

1. Introduction

This study brings together information concerning trade unions policies and programmes on circular and temporary labour migration schemes with trade unions' assessment of the scope, use and effects of these schemes. The study is based on desk research together with personal interviews with key trade union officers responsible for migrant workers' issues at headquarters and in some instances at regional level of the global unions. The study covers those global unions and some national unions with the most significant programmes of work on labour migration. The main sectors covered by the study include the public sector, in particular education and health services, construction, food and agriculture, hotels, domestic workers and commerce and other services. The research was conducted over the period from November 2019 to February 2020. It reviews policies and programmes, recent research or case studies and union initiatives to organise and advocate for the rights of migrant workers. The study is illustrative rather than exhaustive and seeks to provide an overview of the policy positions and the range of programmes and good practice currently in place. In terms of the trade union assessment of the scope, use and effects of circular and temporary labour migration schemes, although there are some sectoral differences, overall there is a strong consensus that with few exceptions, such schemes are failing to provide adequate protection for the rights of migrant workers, or take into account gender-specific aspects of migration.

2. The international and regional legal frameworks

In 2019 the number of international migrants grew to 272 million globally, an increase of 51 million since 2010 (making up 3.5 per cent of world's total population, compared to 2.8 per cent in 2000 (UN DESA 2019). Around 164 million are migrant workers (ILO 2017) and 48.2 per cent are women. Projections of ever increasing levels of migration arise because of demographic changes, skills shortages and poverty, fuelled by situations of political instability, conflict and climate change.

The ILO emphasises the importance of embedding international labour standards in systems designed to govern migration and that the social partners' perspectives 'are crucial to the elaboration and implementation of credible, viable and sustainable labour migration policy and practice at the national and global level' (See Figure 1).³⁷ Since 2006, with the adoption of the ILO's 'Multilateral Framework on Labour Migration: Non-Binding Principles', the ILO has implemented various programmes and provided technical assistance to governments with the aim of ensuring decent work for migrant workers. The Fair Recruitment Initiative was launched in 2014 with the aim to help prevent human trafficking and forced labour to strengthen the protection of migrant workers from abusive practices during the recruitment and placement process. 'General principles and operational guidelines on fair recruitment' were developed at Tripartite Meetings of Experts in September 2016 and the definition of recruitment fees and related costs at a meeting in November 2018. The conclusions to the general discussion on labour migration at the International Labour Conference in June 2017 with its ensuing Plan of Action provides further practical guidance for the work of constituents and the office of the ILO.

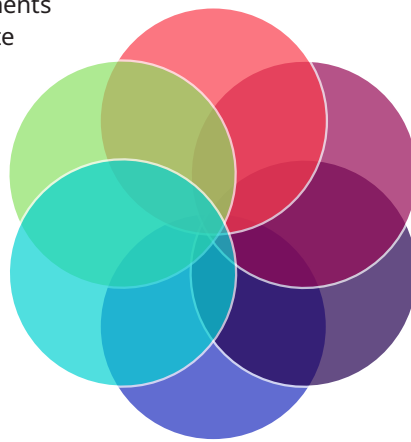
37 ILO International Labour Migration: a Rights-Based Approach (2010) p. 202

► **Figure 1. International standards and instruments for the regulation of bilateral labour agreement**

International instruments provide a solid foundation for developing BLMAs and MoUs for good governance of labour migration and protection of migrant workers.

The **ILO Multilateral Framework on Labour Migration: Non-binding Principles and Guidelines for a Rights-based Approach to Labour Migration** is a compendium of principles and guidelines on labour migration based on the ILO labour instruments and negotiated through tripartite consultations (ILO, 2006).

9 universal human rights instruments and associated protocols as well as the UN International Convention on the Protection of the Rights of All Migrant Workers and Member of Their Families.



All other **labour standards** that apply to migrant workers including particularly the ILO Convention on Private Employment Agencies, 1997 (ILO Convention No. 181), and the Domestic Workers Convention, 2011 (ILO Convention No. 189).


8 ILO core conventions on fundamental principles and rights at work pertaining to forced labour, freedom of association, child labour and discrimination.

2 ILO migrant worker-specific conventions and their recommendations

- ILO Migration for Employment Convention, 1949 (ILO Convention No. 97), and ILO Recommendation No. 86 (Model Agreement)
- ILO Migrant Workers Convention, 1975 (ILO Convention No. 143), and ILO Recommendation No. 151

The UN Global Compact for Safe, Orderly and Regular Migration (UN Global Compact 2018) provides a non-binding multilateral framework which covers fair and ethical recruitment, decent work, labour rights, social protection and portability of social security, access to services, skills recognition and skills partnerships, and vulnerabilities related to migration. The role of civil society and trade unions is recognised and encouraged although trade unions criticised the final text because, among other issues, the principle of non-criminalisation of irregular migrant status was not adopted, hence giving rise to differential regimes for access to services, due process and coverage under human and labour rights.³⁸

Over the last decade, the Global Unions have increasingly addressed the issue of temporary and circular migration, largely within the framework of advocacy work at the Global Forum on Migration and Development (GFMD) and in relation to the UN Global Compact, as well as in response to the ILO 2016 General Survey concerning the migrant workers' instruments and in the 2017 International Labour Conference general discussion on labour migration.³⁹ The Council of Global Unions (CGU) formed a Task Force on Migration in 2008, chaired by the General Secretary of Building and Wood Workers' International (BWI). The Task Force agrees policies and develops strategies for common action. It has focused on a rights-based approach to migration, and ensuring that the ILO Conventions on migration and the decent work agenda were included in the Global Compact negotiation texts. It has argued consistently that the approach to labour migration should focus on the human rights of workers and not as a goal or enabler for development.

 Without freedom of employment and guarantees of equal treatment, temporary migration is potentially a 21st Century face of labour enslavement the world has struggled to rid itself of.

Sharan Burrow, ITUC President, Statement to the High-Level Dialogue of the UNGA on International Migration and Development, 14-15 September 2006, New York.

³⁸ See ITUC media release 'Global Compact on Migration: Recognition of Labour Standards and Unions' 17.07.2018 available at <https://www.ituc-csi.org/global-compact-on-migration?lang=en>.

³⁹ 'Promoting fair migration: General Survey concerning the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations Report III (Part 1B) ILO 2016 and Reports of the Committee for Labour Migration: Resolution and conclusions ILO 2017.

3. Regional economic communities (RECs)

At regional level, regional economic communities (RECs) and regional cooperation bodies have adopted a variety of labour migration governance models, with a gradual lifting of barriers to the movement of people and the right of residence. General agreements or protocols create a legal and policy framework for labour migration through harmonisation of labour and social security legislation and mutual recognition of qualifications. The European Union has the most developed labour migration framework allowing for the free movement of persons within the internal market. It has a detailed set of labour migration standards. However, other regional cooperation agreements are less well regulated.⁴⁰ The extent to which trade unions have been able to engage through social dialogue mechanisms on labour migration issues within RECs varies considerably from region to region. Below are a few illustrative examples.

European Union

The European Trade Union Confederation⁴¹ (ETUC) supports fair and freely chosen mobility for all workers and their families within the EU, while guaranteeing their rights, including social security benefits. They note however that the existing legal framework is very complex and mobile workers often experience discrimination or unequal treatment in fields such as social security, working conditions and wages, access to welfare and education as well as in taxation. However, the ETUC has welcomed two recent advances in terms of the protection of the approximately 2 million workers posted from one country to another within the EU.

EU Posting of Workers Directive

The ETUC and affiliated organisations has been working to ensure equal pay and rights for posted workers in the face of widespread cross-border fraud as a consequence of freedom of services and movement within the EU internal market. They refer to a substantial industry of rogue employers who profit from social dumping at the expense of vulnerable workers and the local workforce, which also erodes public trust in freedom of movement.⁴² Problems arise from competing legal competences, weak enforcement and the breach or circumvention of posted workers' rights.⁴³ In May 2018, the revised Posting of Workers Directive was adopted by the European Parliament and welcomed by the ETUC as a long-overdue guarantee of the principle of the 'same salary for the same work in the same place'. The ETUC considers that provisions for responsibility through the sub-contracting chain need to be strengthened. It is working with its affiliates to ensure the proper transposition of this revised Posting of Workers Directive in all Member States, including the principles of equal remuneration and the obligation of employers to reimburse posted workers for travel and board and lodgings.⁴⁴ One recent good practice

40 ILO - A rights-based approach to migration (2010).

41 Many thanks to Joakim Smedman, Legal Adviser, ETUC for providing information on these issues.

42 See ETUC 'Unions refer first exploitation cases to new European Labour Authority for investigation' 15.10.2019 available at: <https://www.etuc.org/en/pressrelease/unions-refer-first-exploitation-cases-new-european-labour-authority-investigation>.

43 Zane Rasnača and Magdalena Bernaciak 'Posting of workers before national courts', European Trade Union Institute, Brussels, 2020.

44 See: 'Posting: the ETUC continues to fight for equal treatment and full respect of workers' rights' ETUC 25.09.2019 available at: <https://www.etuc.org/en/document/posting-etuc-continues-fight-equal-treatment-and-full-respect-workers-rights>.

involved the German Food Workers Union (NGG). The collective bargaining agreement for meat workers concluded in 2018 reflects legislative improvements under the 2017 Posting of Workers Act, requiring the host company to be liable for the actions of sub-contractors, including paying of social security contributions.

The transport sector is the subject of a separate Mobility Package reached as part of a trialogue between the European Transport Workers' Federation (ETF) with the Council of Ministers and European Parliament. The ETF is seeking better rules for the sector to effectively address social dumping and unfair competition and advocate for strong enforcement and sanctions.⁴⁵

The establishment of a European Labour Authority

The ETUC has supported the proposals for the establishment of a European Labour Authority (ELA) to improve national implementation of EU labour law and social security law regulating cross-border matters and provisions for joint inspections, cooperation and exchange of information. Launched in October 2019, the ETUC considers the ELA a step forward in strengthening workers' rights, by helping national authorities apply and enforce European labour law and to fight abuses in labour mobility, social security and the posting of workers. The Authority will also improve the information to workers and employers on their rights and obligations; coordinate and support inspections; and facilitate cooperation between Member States in applying and enforcing EU law. It provides a mechanism whereby trade unions can refer cases across borders for investigation concerning bogus self-employment, unpaid wages and other breaches of employment rights and tactical bankruptcies. The ELA safeguards the autonomy of employers and trade unions to reach collective agreements and also for unions to take industrial action. In 2018, the ETUC and the European Federation of Building and Woodworkers (EFBWW) filed a number of cases before the ELA that referred to the abuse of construction workers posted to other countries.⁴⁶

ASEAN/ASEAN Economic Community (AEC)

Since 2007, trade unions have engaged in tripartite social dialogue on a range of economic integration agreements within ASEAN. Trade unions, coordinated in large measure by the regional offices of the global unions, Union Network International (UNI), Public Services International (PSI) and Building and Wood Workers' International (BWI), have been consistent advocates for the incorporation of a social and labour agenda in these agreements. Working with civil society, their advocacy led to the adoption in 2007 of the ASEAN Social Charter and the ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers.⁴⁷ Trade unions were critical of the non-binding nature of this declaration and that it does not cover irregular migrants. In the same year, the ASEAN Services Employees Trade Union Council (ASETUC) was formed to facilitate a more focused engagement with ASEAN, including a series of ASEAN Regional Tripartite Social Dialogue Conferences, with the participation of labour ministries, the ASEAN Confederation of Employers and trade unions. The ASEAN Forum on Migrant Labour was formed in 2008. Within this framework, ASETUC commissioned a series of research studies on labour laws in the

45 See: 'Mobility Package: ETF Statement on the trilogue outcome' ETF 12.12. 2019 available at <https://www.etf-europe.org/mobility-package-etf-statement-on-the-trilogue-outcome/>.

46 See ETUC Position: For a Strong European Labour Authority, 12 April 2018 available at: <https://www.etuc.org/en/document/etuc-position-strong-european-labour-authority> and 'Agreement reached on European Labour Authority' 14.02.2019 available at: <https://www.etuc.org/en/pressrelease/agreement-reached-european-labour-authority>.

47 See: https://asean.org/?static_post=asean-declaration-on-the-protection-and-promotion-of-the-rights-of-migrant-workers

ASEAN countries leading to the adoption in 2010 of the ASEAN Guidelines on Good Industrial Relations Practices. The ASEAN Economic Community (AEC) was formed in 2015, and the ASEAN Consensus on the Protection and Promotion of the Rights of Migrant Workers was adopted in 2018. Trade unions are again critical of the non-binding nature of this declaration and continue to advocate for a legally-binding framework instrument. Regional Tripartite Social Dialogue meetings continue as part of the annual work plan of the ASEAN labour ministries (2016-22) and the protection of migrant workers' rights are included on the agenda.⁴⁸

MERCOSUR

The Statute of Citizenship of MERCOSUR⁴⁹ and subsequent legislation allows for the free movement of people for purposes of work or study, which currently covers the MERCOSUR countries of Argentina, Brazil, Paraguay and Uruguay, and associated countries of Bolivia, Chile, Colombia, Ecuador and Peru. The right of work or study is granted initially for a two-year period, leading to the right of permanent residence. A MERCOSUR social security agreement covers Argentina, Brazil, Paraguay and Uruguay. In addition, the Ibero-American Multilateral Agreement on Social Security provides for the portability of social security rights and covers South and Central America, Spain and Portugal and has been ratified by 12 countries. Trade unions note that given this right to free movement and social security protection, there has been little incentive to develop bilateral labour migration agreements (BLMAs). However, although these pathways to residency exist, many migrants through lack of information or necessary documentation, are working in the informal economy with irregular status after they have entered on a three-month tourist visa.

The Coordinating Body of Southern Cone Trade Union Centres (CCSCS)⁵⁰ was formed in 1986 prior to the formation of MERCOSUR in 1991. From 2003 onwards, the CCSCS became more active and presented policy proposals for the common market to deliver on a shared vision of job creation and social justice. Various forums and high-level tripartite bodies were established leading to the adoption of a MERCOSUR declaration on a policy for employment generation. However, the follow-up mechanisms were relatively weak. Although there was a generally favourable political landscape for tripartism during this period, there was only limited progress in institutionalising workers' rights and dispute resolution mechanisms at MERCOSUR level. For example, although the issue has been discussed, no regional labour inspectorate or other mechanisms have yet been established.⁵¹

48 UNI Global Union Asia Pacific 'Breaking Through – Looking Forward' Regional Secretary's Report 2015-2018, 20-22 November, 2019, Kathmandu

49 *Estatuto de la Ciudadanía del MERCOSUR* available at: http://www.cartillaciudadania.mercosur.int/oldAssets/uploads/DEC_032-2017_ES_Estatuto%20Ciudadania-Plan%20de%20Accion.pdf

50 *Coordinadora de Centrales Sindicales del Cono Sur* comprised Brazil, Argentina, Chile, Paraguay and Uruguay when first founded although Chile is not a member of MercoSur. Venezuela is a member of the CCSCS but does not participate in meetings.

51 Maria Silvia Portela de Castro: 'El sindicalismo frente al Mercosur' Nueva Sociedad No 211 septiembre-octubre 2007

African Union

The African Union (AU) includes within its mandate the 'gradual removal, among Member states, of obstacles to the free movement of persons, goods, services and capital and the right of residence and establishment' (Abuja Treaty, 1991, Art.4 (2i) and there are similar aspirations in various economic integration treaties. The AU Protocol relating to the Free Movement of Persons, Right and Residence and Right of Establishment was adopted in 2018.⁵²

One good practice example is the SADC Protocol on Employment and Labour (2014) which recognises the principles of basic human rights, including the ILO Conventions and calls for State Parties to take 'appropriate steps to ratify and implement all ILO Core and Governance Conventions' (Article 5.2) and specifically recalls State Parties obligations concerning freedom of association and collective bargaining (Article 6), equal treatment (Article 7) as well as social protection and occupational safety and health. The Protocol also calls for portability of social security benefits through the adoption of appropriate bilateral and multilateral agreements providing for equality of treatment of non-citizens, as well as inclusive participatory and institutionalised social dialogue structures. It sets up monitoring structures to include the Committee of Ministers of Employment and social partners. However, the ratification by member states has been limited.⁵³

4. Bilateral labour migration agreements

There are now a large number of Economic Partnership Agreements (EPAs), bilateral labour migration agreements (BLMAs), Memorandum of Understanding (MOUs) and other protocols, whereby countries seek to regulate the level and type of migration that will be allowed. The ILO notes 'a global upsurge' in BLMAs since the 1990s. BLMAs are generally legally binding while MOUs are non-binding frameworks. About 70-80 per cent of labour migration agreements in Africa, Europe and the Americas are legally binding BLMAs, while around 70 per cent of those in Asia are MOUs.⁵⁴ Many of these agreements concern labour migration towards emerging economies or the Gulf Cooperation Council (GCC) states where labour laws and social security protection are relatively weak.

The Migration for Employment Recommendation, 1949 (No. 86) includes a model agreement on temporary or permanent migration for employment, adopted as a tripartite consensus. However, since then, no further model BLMA has been developed as part of a tripartite consensus. The SADC, in association with the IOM has issued a regional guide to bilateral labour agreements, which sets out the key components of a BLMA, including a 15-point checklist of minimum standards.⁵⁵

52 See van der Nest, Gavin, 'Movement of person and migration in Africa, Consideration for African integration' AfCFTA Trade Law Centre (tralac) Working Paper, No S19WP06/June 2019 Stellenbosch, South Africa

53 Segatti, Aurelia, 'The Southern African Development Community: a walk away from the free movement of persons?' in Migration, Free Movement and Regional Integration, UNESCO, 2017

54 'Addressing governance challenges in a changing labour migration landscape', Report IV to the International Labour Conference, 106th Sessions, 2017

55 IOM 'Bilateral labour agreements in the Southern African Development Community' Maputo, 2016

5. Trade union policies on circular and temporary labour migration schemes

The ILO Workers' Group has called for renewed campaigns by the ILO, global unions and national affiliates for the ratification and implementation of international instruments that promote human and trade union rights of migrants and their families and in particular the ratification of the ILO Conventions 97 and 143 and their accompanying recommendations. They have also called for the ratification of the 1997 Private Employment Agencies Convention (No 181) which to date has only been ratified by 34 countries⁵⁶ and for governments to ratify the UN Convention on the Protection of the Rights of All Migrant Workers and Members of their Families. Given their importance for the protection of migrant workers' rights, trade unions also emphasise in their advocacy on migrant workers, the need for the ratification and implementation of ILO fundamental Conventions.⁵⁷ Trade unions have also noted in this context the importance of the early ratification of the 2011 Domestic Workers Convention (No. 189), as many domestic workers are migrant workers in extremely vulnerable situations.

Council of Global Unions (CGU)

From 2008, the Council of Global Unions has issued written and oral statements to the Global Forum on Migration and Development, challenging 'a narrow focus on temporary and circular migration to fill labour market shortages in receiving countries' and calling for a comprehensive approach which places migrant workers and their well-being at the centre of the policy paradigm, guarantees their fundamental human and trade union rights, and accords them voice and representation through trade unions'.⁵⁸ It has raised concerns about the aggressive promotion of temporary labour migration programmes by both countries of destination and origin as a measure for economic development. It considers that temporary or circular migration models that limit the duration of work and tie workers to a single employer have a chilling effect on any practical possibility to organise or become active in trade unions. In this way, "the surge of temporary workers has contributed to a general erosion of workers' ability to exercise their rights, to join trade unions and bargain collectively with their employers".⁵⁹

In the statements to the GFMD, the CGU listed the following policy principles on temporary migrant workers:

- Migrant workers should receive details of their living and working conditions in a language they understand before leaving their country of origin.
- Governments must take active measures to prevent human trafficking and the exploitation of migrant workers by labour intermediaries, both public and private, including temporary work agencies.

⁵⁶ As of November 2019

⁵⁷ The eight fundamental Conventions are: [Forced Labour Convention, 1930 \(No. 29\)](#), the [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#), the [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#), the [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#), the [Equal Remuneration Convention, 1951 \(No. 100\)](#), the [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#), the [Minimum Age Convention, 1973 \(No. 138\)](#), and the [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#).

⁵⁸ Council of Global Unions "Constructing an architecture of protection of human and trade union rights for migrant workers and their families" Global Unions Statement to the 2nd Global Forum on Migration and Development, Manila Philippines, 27-30 October 2008.

⁵⁹ Council of Global Unions 'Statement to the 4th Global Forum on Migration and Development', Puerto Vallarta, 8-9 November 2010.

- Governments should ensure that immigration legislation governing migrant workers recruited through agencies does not conflict with labour laws by imposing restrictions on migrant workers' rights to join trade unions or bargain collectively.
- Workers should not be required to pay deposits, or visa, transportation and hiring fees. In the case of agencies dispatching workers to other countries, the agencies should be required to repatriate workers in the event that their employment ends or the user company disappears.
- Workers must not be required to surrender their passports or other travel or identity documents.
- Temporary migrant workers should have full rights to legal redress in the country where they work.
- All recruitment agencies should be regulated and licensed in line with ILO Convention 181 on Private Employment Agencies, including provision for sanctions and penalties for unethical and abusive practices.
- Efforts to help migrant workers need to take sectoral issues fully into account.
- Special measures are required to protect women migrant workers who are often in the most vulnerable employment relations.⁶⁰

International Trade Union Confederation (ITUC)⁶¹

The ITUC has emphasised the urgency of a rights-based approach to migration based on non-discrimination, and ensuring decent work for all. The ITUC has highlighted that migrant workers generally suffer from discrimination and segregation in occupations traditionally considered to be 'low-skilled', with less advantageous working conditions and skills mismatch; and considers that these situations are compounded by policies that limit the duration of work permits, by circular, temporary or seasonal labour migration programmes and by placements in unregulated transnational temporary work agencies.⁶²

The ITUC 2014 World Congress resolution states "every migrant worker should have the choice to stay at home where full employment, decent work and social protection is guaranteed or alternatively have a path to citizenship in a new country of their choosing".⁶³

At the 2018 World Congress, the ITUC agreed to strengthen support to its affiliates to organise migrant workers and reaffirmed that all migrant workers, including temporary migrant workers, must be able to enjoy the right to freedom of association and collective bargaining. It recognised that more attention should be paid to 'circular migration' and refers to today's 'modern nomads' particularly in the labour intensive or seasonal sectors such as construction and agricultural. It underlines that all workers have rights, regardless of their migration status and calls for actions to prevent the exploitation of undocumented workers.

Particularly in the context of reforms to the UN system, the ITUC has repeatedly called for the ILO through social dialogue to be the lead UN agency on the governance of labour migration, because of its rights-based, constitutional mandate, tripartite structure, and expertise in labour issues.

60 Council of Global Unions 'Statement to the 4th Global Forum on Migration and Development', Puerto Vallarta, 8-9 November 2010 & Council of Global Unions, 'Statement to the Global Forum on Migration and Development' 2016 Bangladesh & Council of Global Unions, 'Statement to the Global Forum on Migration and Development', Germany, 2017.

61 Many thanks to Chidi King, Director, Equality Department and Ira Rachmawati, Project Officer, HTUR Department, ITUC interviewed on December 16 2019 and email correspondence.

62 Promoting fair migration: General Survey concerning the migrant workers instruments, Report of the Committee of Experts on the Application of Conventions and Recommendations Report III (Part 1B) ILO 2016.

63 Resolution on Peace and Democracy 'Building Workers' Power' Congress Statement, 3rd ITUC World Congress 18-23 May 2014, Berlin pp 10-11.

The ITUC has expressed concern that the proliferation of BLMAs obscures the need to ensure that migrant workers are covered by national labour laws and other relevant legislation and that in this context, it is important for these BLMAs to be made available in understandable terms to those whom they are intended to benefit.⁶⁴ The promotion of models of circular or temporary migration increases the difficulties of organising or integrating migrant workers into trade unions as migrant workers on temporary contracts are less likely to join a union, true for workers of diverse skill sets, and organising a workforce on temporary contracts is very challenging. Furthermore, in some countries migrant workers are prohibited from being elected into the leadership of unions. In addition, many migrant workers, if they leave their first employment, fall into undocumented status which creates additional obstacles for trade unions to reach out.

In the current context, the ITUC considers that BLMAs are not primarily intended to protect workers' rights but rather are similar in form to trade agreements. They often fail to incorporate ILO labour standards, including the principles established in the 2006 ILO *Multilateral Framework for Labour Migration*, in particular those relating to non-discrimination in wages and access to social security or portability of social security. They largely ignore gender issues. Generally speaking, workers and trade unions are excluded from the negotiation of the BLMAs and therefore cannot address these labour standard deficits. There are also very poor to non-existent monitoring and evaluation mechanisms. For effective monitoring, it is essential to ensure the participation of the social partners (ITUC Interview December 2019).

African Trade Unions Migration Network⁶⁵

The African Trade Unions Migration Network (ATUMNET) was formed in August 2016 in order to develop trade union responses to labour migration and protect and promote the rights of migrants and refugees. Comprising ITUC-Africa, national trade union centres, global union African regional offices and other stakeholders, ATUMNET has encouraged trade unions on the continent to give greater priority to the organisation of migrant workers, form national structures and alliances and liaise and partner with regional organisations so as to enhance the development benefits of migration. ATUMNET has carried out advocacy to promote the ratification of relevant ILO standards, fair recruitment practices, improvements in BLMA provisions, and equal access to and portability of social protection, as well as support to greater African integration through programmes such as 'visa on arrival'.⁶⁶ According to ITUC-Africa, these measures have the potential to facilitate labour migration within the African continent and reduce discrimination and indeed, the numbers of persons making desperate journeys.

CSA/TUCA Working Group to promote the rights of migrants

In the Americas, a network was formed in 2015, initially comprising Southern Cone and Andean countries, to promote the rights of migrant workers, to support the free movement of workers, the right to choose to migrate and to return home in dignity.⁶⁷ A TUCA/CSA working group was then formed in 2016. The TUCA/CSA considers that migrant workers, whether with regular or irregular status, should enjoy equal rights with other workers. It has promoted campaigns for the ratification of international labour standards, including the Indigenous and Tribal Peoples Convention 169 (1989) and Recommendation

64 See ILO General Survey on Migration (2016) para 153 and 'Bilateral Agreements and Memorandum of Understanding on Migration of Low-Skilled Workers- A Review' July 2015 para 153 - 163.

65 Many thanks to Akhator Joel Odigie, Deputy General Secretary, ITUC Africa for his email correspondence and documentation on the work of ATUMNET.

66 Guidelines for the African Trade Unions Migration Network (ATUMNET) 2017.

67 'Declaración del 1er Seminario Regional América del Sur –Área Andina para la Promoción de una Red Sindical en favour de los derechos de los migrantes', Buenos Aires, 3-4 Septiembre 2015.

204 concerning the transition from the informal to the formal economy. It has called for governments to set up inter-departmental coordinating bodies on migration and tripartite social dialogue mechanisms. TUCA/CSA has criticised the failure of the regional economic commissions to establish effective tripartite social dialogue mechanisms on migration issues.⁶⁸

Building and Wood Workers' International (BWI)⁶⁹

The main focus of BWI's work on migration has been the construction industry although migrant labour is also common in the forestry sector. BWI argues that the construction industry by its very nature requires temporary work but the issue is the temporary nature of the employment relationship not the temporary nature of the work itself. If a main contractor employs a worker on a permanent basis although the location of the work site moves, including across borders, the worker is protected and the BWI would support these forms of contractual arrangement. In these cases, it is the employer who is responsible for finding the next job not the worker. However, in the vast majority of cases, the employer takes no responsibility for the continuous employment of the worker.

BWI Global Campaign for Migrant Workers' Rights

The Global Campaign for Migrant Workers' Rights was launched in 2010 and was reaffirmed as an important priority for BWI at the 3rd BWI World Congress in 2013, when two resolutions were adopted: 'BWI Global Campaign on Migrant Workers' Rights' and 'Qatar: Upholding the Rights of South Asian Migrant Workers'.

In the opinions of BWI, the social partners are not included in the negotiation of BLMAs. BWI has called for the harmonisation of BLMAs as there are many anomalies and discriminatory situations which arise because of their provisions. For example, Malaysia negotiated a BLMA with the Philippines government with a higher minimum wage provision than the BLMA negotiated with the Vietnamese government. In this case, the governments have not established any institutional monitoring process for the BLMAs and in practice it depends on the good will of the labour attachés in the diplomatic missions whether any action is taken in cases of serious abuse and exploitation of their nationals. BWI has advocated setting up a structure to monitor BLMAs similar to the reference groups that form part of the Global Framework Agreements with multinational enterprises. Reference groups form part of most of the Global Framework Agreements and are composed of equal numbers of union and company representatives. They typically meet once a year or more if necessary in order to monitor the implementation of the agreement and to review reports on compliance. The group can agree to conduct on-site inspections and can organise training or joint programmes on issues such as labour laws, occupational health and safety, dispute resolution mechanisms and skills development.⁷⁰

68 CSA/TUCA 'Contribuciones del Grupo de Trabajo sobre Migraciones de la CSA de cara a la CIT 2006'.

69 The late Jin Sook Lee, BWI Global Campaigns Director contributed to this study, interviewed on 2 December 2019 and with subsequent email correspondence.

70 See for example, the Framework Agreement between QDVC-VICI-BWI, 2017 available at: https://www.bwint.org/web/content/cms.media/661/datas/Signing_BWI_QDVC_Vinci.pdf.

Education International (EI)⁷¹

Education International has been working on issues of teacher mobility and migration since its foundation in 1993. It considers that teacher mobility is a global phenomenon requiring coordinated efforts to promote equality for migrant teachers and to address the violation of migrant teachers' labour rights and the unscrupulous actions of some employment agencies. However, on the other hand, it recognises that the exchange of ideas and experiences between teachers from different nationalities, and ethnic and religious backgrounds benefits education systems and enriches the curriculum and student outcomes. To that end it is committed to working with multi-lateral organisations, including UNESCO and the ILO, to promote the benefits of teacher mobility, while at the same time protecting the integrity of vulnerable education systems, particularly those of developing countries.⁷²

EI recognises the right of every teacher to migrate. Linking the migration phenomenon to the lack of investment in quality public education, Education International also campaigns for improved conditions of service for education personnel to reduce the factors that cause brain drain and to facilitate the return of migrant teachers back into the teaching profession.

EI Task Force on Teacher Migration and Mobility

Prior to the 6th World Congress in 2011, EI established a Teacher Migration and Mobility Taskforce to assist EI develop a campaign to promote the rights of migrant teachers and their families, and denounce exploitative practices and promote decent work for all education personnel. The task force was in operation until the 2015 World Congress.

Most recently, EI's focus within the area of teacher migration has shifted to include education in emergency situations, forced migration and education in conflict-affected areas and the protection of the professional role of teachers forced to migrate; as well as access to education for migrant, asylum-seeking and refugee children.⁷³

The EI Commonwealth Teachers' Group reviewed bilateral agreements between governments. EI is aware of many examples where trade unions have not been consulted over the terms of the BLMA. Trade unions are critical of agreements to post teachers abroad when there are shortages and lack of investment at home. For example, in April 2018, Liberia requested the Nigerian government to send 6000 teachers as part of a Technical Assistance Corps agreement and the Nigerian Union of Teachers (NUT) condemned the proposal on the grounds that the country does not have enough teachers for its own schools.⁷⁴ In the study on *"Getting Teacher Migration and Mobility Right"*, the EI argues that BLMAs should include some form of human capital replenishment mechanisms on the basis of a per capita levy to be paid to the Ministry of Education or appropriate teacher training institution(s).⁷⁵

71 Many thanks to Dennis Sinyolo, Senior Coordinator, Education and Employment, Education International who contributed to this section through an interview on 25 November 2019 and email correspondence; and many thanks to Pathma Krishnan, EI Asia Pacific Regional Coordinator, interviewed on 10 December 2019 and email correspondence.

72 Education International 7th World Congress July 2015 'Resolution on migration, professional diversity and racism' and 6th World Congress July 2011 'Resolution on Teacher Migration and Mobility'.

73 See 'Educators' optimism and conviction evident as refugee education receives attention it deserves' EI media release 21.11.2016 on the EI Conference on Refugee Education Stockholm November 2016.

74 Education International 'Nigeria: Address quality education at home first, not be sending teachers abroad', 26 April 2018 available at: <https://ei-ie.org/en/detail/15809/nigeria-address-quality-education-at-home-first-not-by-sending-teachers-abroad>.

75 Caravatt, Marie-Louise, Lederer, Shannon McLeod, Lupico Allison, Van Meter, Nancy, "Getting Teacher Migration and Mobility Right" Education International, Brussels, May 2014 available at: <https://issuu.com/educationinternational/docs/teachermigrationstudy>.

Mutual recognition of professional qualifications

EI and its affiliates have taken the lead in creating a set of standards to define quality professional teaching, known as the Global Framework of Professional Teaching Standards, a joint initiative together with UNESCO and endorsed by the EI World Congress in July 2019. The professional competences and capabilities are designed to strengthen teacher education and development programmes and could promote greater teacher mobility. The Framework was launched at the UNESCO General Conference in November 2019.⁷⁶ In addition, a Convention on the recognition of higher education qualifications was adopted, which will also strengthen student and academic mobility.

International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations (IUF)⁷⁷

In all IUF sectors, there are high proportions of migrant workers, including agriculture, hotels and restaurants, food-processing and domestic work. These sectors are among those where migrant workers are most vulnerable to exploitation and abuse. In agriculture and hospitality, much work is temporary, seasonal work and in many countries, the majority of workers are women. Migrant workers are often undocumented workers, prey to unscrupulous recruiters, on short-term contracts, paid cash-in-hand and have no social protection. They often have sub-standard accommodation and are exposed to multiple occupational health and safety risks.

Historically, the IUF and its affiliates have been among the most active defenders of migrant labour in Europe, driven at first in large measure by exposés of the exploitative working conditions of Maghreb workers in commercial agriculture in Spain.⁷⁸ The IUF drew up a Charter of the Rights of Migrant Workers in Agriculture, which was adopted by the IUF Executive Committee in 2004 and the 2007 World Congress. It then published a handbook on organising and defending migrant workers, with case studies of union information and organising initiatives from different continents, including the USA, the European Union, Central Asia and South East Asia, and Australia.⁷⁹ In this way, the IUF sought to encourage its affiliates to increase the priority given to organising and defending the interests of migrant workers. These documents remain the main policy and training materials in use today.

At national level, the IUF has sought to strengthen government regulations to ensure that migrant workers have equal treatment to nationals, and have the right to join trade unions. Advocacy issues include fair and transparent work permit systems; strengthened regulation and enforcement against unscrupulous employment agencies; and promotion of rights-based bilateral labour agreements to improve conditions for migrant workers.

The IUF has stated that work permits and entry permits should not be linked to a specific employer. One particularly egregious example is the South Korean Employment Permit Scheme (EPS). In 2014, the IUF joined with Amnesty International to denounce the exploitative conditions of some 20,000 agricultural migrant workers from Cambodia, Nepal and Vietnam, who are particularly vulnerable because there are severe restrictions on the migrant workers' right to change employer.⁸⁰ Other bargaining issues include regulation of temporary workers to gain permanent contracts or limitations on the proportion

⁷⁶ See : <https://ei-ie.org/en/amp-detail/16559/40th-unesco-general-conference-teachers-and-educators-at-the-core-of-achieving-sdg-4> and <https://en.unesco.org/themes/higher-education/recognition-qualifications/global-convention>

⁷⁷ Many thanks to Kirill Buketov for his contributions to this section based on an interview on 21 November 2019 and email correspondence.

⁷⁸ Ford, Michele, 'From Migrant to Worker: Global Unions and Temporary Labour Migration in Asia', Cornell University Press 2019.

⁷⁹ 'Workers and Unions on the Move: Organising and defending migrant workers in agriculture and allied sectors', IUF, May 2008.

⁸⁰ IUF: 'Government of South Korea must act to halt massive abuse of migrant agricultural workers', Media Release 28 October 2014.

of the workforce that can be on temporary contracts. In the United States, long-standing demands from the unions include rights on the job without regard to immigration status, family reunification and legislation providing pathways to citizenships. The IUF and the European Federation of Food, Agriculture and Tourism Trade Unions (EFFAT) have also expressed concern at the degradation of State supported vocational training programmes with employers seemingly preferring to resort to a 'global labour market' and recruit from abroad.

Public Services International (PSI)⁸¹

PSI's work on circular and temporary labour migration has largely focused on the health sector. PSI considers that circular and temporary migration in the health sector is problematic because unlike other sectors, such as agriculture or construction, health sector jobs are not temporary or cyclical. At the moment there is a structural and serious shortage of trained health workers personnel in both high-income countries and elsewhere; and employers are not investing sufficiently in training in high-income countries but resort to international recruitment to meet demand. On the other hand, employers in low- or middle-income countries are reluctant to invest in health worker training only to lose the trained personnel to higher income countries. PSI also expresses concerns that temporary work can impact negatively on the quality of care service provided and that in general, temporary workers face discriminatory treatment in terms of benefits, and access to training and promotion.

The WHO has listed 57 countries where there is a critical shortage of health personnel, of which 36 are in Sub-Saharan countries (WHO 2006). However, there are still many examples of active recruitment of health personnel in those countries, for example from Ghana and Nigeria.⁸² For that reason, PSI considers fair and ethical recruitment is a major issue. PSI's position is that ethical recruitment, human rights norms and international labour standards should be embedded in all bilateral, regional or multilateral agreements.

PSI's migration of health workers' programmes

The aim of PSI's migration of health workers programme is to promote rights-based migration, decent work, fair and ethical recruitment, and to defend quality public services for all. PSI's migration programme is closely linked to the PSI 'right to health' campaign⁸³ and focuses on the following pillars:

- (a) Informing and empowering health workers to make informed decisions
- (b) Promoting fair and ethical recruitment
- (c) Advocacy and influence with partners (e.g. NGOs, the ILO and the WHO).

⁸¹ Many thanks to Genevieve Gencianos, PSI Migration Programme Coordinator, for her contributions to this section based on an interview on 26 November 2019 and email correspondence.

⁸² Quoted in draft PSI Policy Paper 'Health Without Borders' Jane Pillinger 2019.

⁸³ See: <https://publicservices.international/campaigns/right-to-health-campaign?id=5736&lang=en&search=%7B%7D>.

Global Skills Partnerships in the Health Sector

The UN Global Compact includes provision (Objective 18(e)) for a Global Skills Partnerships (GSPs), as a mechanism to 'strengthen training capacities of national authorities and relevant stakeholders'. GSPs are bilateral public-private partnerships established to train and source skilled workers from low and middle-income countries in their country of origin, and then to facilitate placements for a limited period of time in the country that funded the training. The costs of the training could be recovered from the worker through a 'student loan' model.

PSI commissioned a study on the GSPs, which led to the conclusion that they would primarily benefit destination countries and fail to provide a rights-based approach to health services development. PSI argues that the GSPs offer short-term solutions, mainly designed to facilitate temporary migration. PSI argues it is essential that there be the full engagement of trade unions in the operation of GSPs to ensure decent work and labour rights protection. The GSPs should not become a mechanism whereby rights and standards are derogated, nor can they undermine collective agreements and labour laws and protections. They should be implemented on a government-to-government basis, without private sector participation, and while envisaging mechanisms to ensure return and reintegration, preferably in the public health system if the migrant so chooses, they should also allow for permanent migration or citizenship in the country of destination.⁸⁴

PSI's policy proposals

PSI argues for a new partnership for global health through investment in quality public services and the development of rights-based public-public partnerships to achieve universal health coverage. This would require:

- Greater overall public investment in health and the development of human resource strategies in close cooperation with trade unions so as to reduce the impetus for health workers to migrate.
- Ensure decent working conditions in both source and destination countries to attract and retain staff, including the setting of mandatory needs-based safe and effective staffing levels for in-patient care developed through a social dialogue process.⁸⁵
- Discourage high-income countries of destination to use migration-led recruitment strategies to solve their health workforce shortages. To this end the WHO list of 57 countries with critical shortages of health personnel should be reviewed and extended to cover other health professionals.
- The role of social dialogue and partnerships with trade unions in the implementation and monitoring at national and global level of the WHO Global Code should be strengthened.
- The role of social dialogue and partnerships with trade unions in the drafting and monitoring of BLMAs should also be strengthened. All BLMAs should ensure fair mitigation and compensation measures, for example financial compensation for destination countries to the training systems of source countries to cover the costs of the training provided to health personnel who are recruited.

84 'Perspective on Global Skills Partnerships', presentation by Genevieve Gencianos, PSI to the Meeting of the International Platform on Health Workers Mobility, 13-14 September, 2018, WHO, Geneva.

85 See for example the German Platform for Global Health and the Global Health Hub at <https://www.globalhealthhub.de/en/content/about-us>.

Union Network International (UNI)

UNI represents both professional and non-professional workers in the service sector, including commerce and banking, security, cleaning and care workers, platform and agency workers, communication and postal services and entertainment. There are significant numbers of temporary migrant workers in most of these sectors.

At its 5th World Congress in Liverpool in 2018, UNI adopted a resolution to support campaigns for the rights of all migrants and refugees to have safe haven and decent work and to work to promote the integration of migrants in trade unions at all levels. It also expressed support for affiliates seeking to safeguard the rights of immigrant workers and their families given the global rise of right-wing nationalism and condemned government actions that seek to undermine and deport immigrant workers.⁸⁶

UNI Global Union has a Memorandum of Understanding with some of the leading multinational temporary workers agencies, including ADECCO, Manpower and Randstad, where many migrant workers are employed.⁸⁷ At regional level, UNI Americas Executive Committee in August 2017 agreed to give a special focus to organising migrant workers.⁸⁸ UNI-Africa has worked with postal unions in some countries to develop a low-cost money transfer system to benefit migrant workers sending remittances back home.⁸⁹

In Europe, UNICARE has worked to organise and promote the rights of personal and household service workers. In 2016, the European Economic and Social Committee (EESC) issued an opinion on the rights of live-in care workers, including both EU and third-party citizens, many of whom have resident status dependent on their employer. The opinion called for a range of measures to improve the protection of labour rights, including for undocumented workers; and to ensure the principle of equal pay for equal work. In 2019, UNICARE- Europe launched a new programme to organise workers in personal and household services together with EFFAT and other social partners. The project includes bringing together existing research on Personal Household Services (PHS), organising national conferences and establishing best practice guidelines, as well as developing an on-line information platform. At the launch it was noted that most PHS workers are migrant women workers and there is a need to organise and establish an agenda for sectoral collective bargaining.⁹⁰

⁸⁶ UNI Resolutions adopted by the 5th World Congress of UNI Global Union, Liverpool, 17-20 June 2018.

⁸⁷ Memorandum of Understanding between Ciett Corporate Members and UNI Global Union on Temporary Agency Work October 2008 available at: <https://ec.europa.eu/social/PDFServlet?mode=tca&agreementId=112&langId=en>.

⁸⁸ 'New scenarios, new paradigms to achieve social justice', UNI Global Union Media Release, 7.08.2017 available at <https://www.uniglobalunion.org/news/new-scenarios-new-paradigms-achieve-social-justice>.

⁸⁹ Ford M. idem p. 90.

⁹⁰ 'Advancing personal and household services project kick off', UNI Global Union Media Release, 14.01.2019 available at <https://www.uniglobalunion.org/news/advancing-personal-and-household-services-project-kicks>.

6. Trade union programmes and advocacy on circular and temporary migration

Good practice on negotiating bilateral agreements with social partners

As mentioned above, trade unions are generally critical of the lack of transparency in the way that BLMAs are negotiated. There are very few examples of good practice where trade unions were involved in the negotiations and implementation. The following are some examples cited by trade unions in the course of this research.

The Kenyan National Union of Teachers (KNUT) was involved in negotiating the terms and conditions of employment of teachers who were sent to Rwanda on a temporary basis when the government decided to change the language of instruction from French to English. In India, Kerala state government has policies designed to facilitate migration allowing public school teachers to work abroad for up to 15 years and still be able to return to public education positions.

The IUF cites one good practice of a BLMA between the Kyrgyz and Kazakh governments which was signed as a result of the advocacy of the Kyrgyz Agricultural Workers' Union. The agreement, signed in 2004, sets a minimum age for a migrant worker at 18 years old, establishes a system of recruiter agency licensing, and agreements on equal treatment and access to social insurance.⁹¹

The Triple Win: Recruitment of nursing professionals from third countries to Germany

The Triple Win is a programme of the Federal Employment Agency – International Placement Services (ZAV) and *Deutsche Gesellschaft für Internationale Zusammenarbeit* (GIZ) to recruit nurses from the Philippines, and from Serbia, Tunisia and Bosnia & Herzegovina. Because of the strong tradition of social dialogue in Germany, Ver.di, the PSI affiliate which covers the health sector, was invited to engage with the process and included the PSI affiliate in the Philippines, PSLINK. Both unions are now members of the Triple Win Joint Monitoring Committee and the PSI is an observer member.

Premised on the need to create a sustainable market-funded model, the distinctive features of this programme is that employment contracts and job descriptions are based on local conditions in Germany and checked by German union officials; nurses must commit to undergo a qualifications recognition procedure within the first year of work in Germany; and nurses are offered other forms of support to facilitate work and social integration.

⁹¹ P. 38 'Workers and unions on the move: Organising and defending migrant workers in agriculture and allied sectors', IUF May 2008.

Since 2013, 2348 nurses have been placed in Germany, of whom 1151 are nurses from the Philippines. After two years, 81.5% of the nurses were still with their first employer. As part of the programme, a skills partnership was envisaged to strengthen the Philippines health services although to date it has not been possible to agree the curriculum because of diverging interests. Germany favours courses in gerontology but the Philippines health resource managers have identified other priority areas.⁹²

Advocacy to strengthen national migration governance structures

Trade unions have advocated for governments to adopt national migration policies and government inter-ministerial coordination mechanisms and at the same time they point to a lack of coordination among government departments which makes effective partnerships with trade unions and other civil society organisations a challenge. Trade unions report only a few good practices or emerging good practices.

The government of India has issued a draft Emigration Bill designed to strengthen regulatory mechanisms to ensure safe, orderly and regular migration from India.⁹³ The bill envisages establishing an Emigration Management Authority (EMA) at central and State levels, under the Ministry of External Affairs, with representatives from States and the recruitment industry. The Bill will introduce mandatory registration of all migrant workers and students going abroad, and to develop welfare programmes, including skills training, pre-departure orientation and counselling. It also proposes to register all employment and student recruitment agencies, including their sub-agents, and establishes their duties and responsibilities and liability for penalties in cases of abuse. It is currently open for comments. The BWI affiliates in India submitted feedback on the proposed bill, including the need to ensure that trade unions and civil society organisations were members of the new EMA bodies; calling for greater clarity on the role and responsibility of Indian Embassies and Consulates; the establishment of a Migrant Welfare Fund; and voting rights for migrant workers.

In Nepal, the BWI affiliates have been engaged in advocacy to strengthen the regulation and assistance provided for overseas workers. In October 2018, with the support of BWI, the affiliates submitted a charter of demands to the Department of Foreign Employment of the Ministry of Labour, Employment and Social Security.⁹⁴ The proposals included better regulation of recruitment agencies, streamlining dispute settlement processes for migrant workers, engaging with trade unions as key partners for organising training and pre-departure orientation, and skills training for workers intending to migrate and skills validation for returnee migrants. The charter also called for the government to include decent work provisions in bilateral labour agreements.

The TUCA/CSA Working Group on Migration in 2017 held a first meeting of Southern Cone countries including the National Directorates of Migration and the trade union centres of the four countries and adopted an action plan on migrant workers' rights, including human rights awareness-raising training for national migration authorities.⁹⁵

92 See: Sonja Alves Luciano, GIZ 'Project Triple Win; Nurses from third countries for the German labour market,' presentation to the meeting of the International Platform on Health Workers Mobility 13-14 September 2019 and Record of Discussion, Triple Win Programme 5th Joint Committee Meeting 9th October 2019.

93 See: <https://mea.gov.in/emigrationbill.htm>.

94 BWI: World Day for Decent Work commemoration' Media Release 11.10.2018 available at: <https://www.bwint.org/cms/news-72/world-day-for-decent-work-commemoration-opens-global-conference-on-sports-campaign-in-nepal-1194>.

95 Information kindly provided by Gonzalo Murallo, International Relations Secretary, CTA-A, Argentina in email correspondence dated 3.02.2020.

In 2016, the Italian agricultural workers' unions, FLAI-CGIL, FAI-CISL and UILA-UIL, signed a tripartite agreement with employers, government ministries, and five regional authorities to address the exploitation of agricultural workers through information campaigns about their rights and legal protection, and the provision of language classes. Additionally, the unions proposed setting up an agriculture job placement network using the digital database of the National Institute for Social Protection to encourage employers to hire responsibly through the network with a system of financial incentives.⁹⁶

Union-to-union bilateral agreements to organise and advocate on behalf of migrant workers

The ITUC drew up a model union-to-union cooperation agreement between countries of origin and destination to protect migrant workers in December 2008. The model agreement commits unions to work together with a view to protecting and promoting the rights of migrant workers, and to organise and provide assistance. Since then, a series of union-to-union agreements have been signed either at trade union centre level or at sectoral level. Examples at national union level include agreements between the MTUC Malaysia and SPSI Indonesia; between LO Sweden and LBAS Latvia; CGTM Mauritania and CNTS Senegal; CTRN Costa Rica and CST, CUS and CUSa, Nicaragua.⁹⁷ This strategy was reinforced at a CGU meeting held in 2012 when among other areas, it was agreed to coordinate action on legal assistance, facilitating access to public services and social provisions and union support to migrant workers' associations, as well as developing bilateral agreements between union in countries of origin and destination.⁹⁸

In the Americas, trade unions centres have signed a number of bilateral union-to-union agreements. For example, the CTA-A in Argentina has signed agreements with the CUT-A Paraguay and the COB, Bolivia with the aim of protecting the rights of migrant workers through information exchange and other activities.⁹⁹ In Rio de Janeiro, Brazil, the STICC-POA construction union implemented an outreach programme with Haitian migrant workers. The union organised around 10% of the total Haitian workforce. It then signed a MOU in 2017 with FENACTO, the BWI affiliated construction union in Haiti. The agreement includes a commitment by the Brazilian union to protect Haitian workers in Brazil and mechanisms to strengthen Haitian trade unions. A proportion of the unions fees collected from Haitian migrant workers in Brazil are transferred to the Haitian union to build its own capacity.

In the construction sector, BWI has also conducted a series of regional conferences on the rights of migrant workers to discuss strategies to organise migrant workers; to develop regional action plans and regional networks for organising and advocacy; and establishing bilateral partnerships of BWI affiliates from countries of origin and destination.¹⁰⁰ BWI affiliates have set up programmes to organise migrant workers prior to departure (India, Nepal, and Tajikistan) through pre-departure training programmes. The unions have also conducted advocacy to reform recruitment policies and to improve services for their nationals working abroad.

96 IUF: Italy: new union initiatives to combat widespread abuses of migrant agricultural labour' Media Release, 12.10 2016 available at: <http://www.iuf.org/w/?q=node/5176>.

97 Examples include agreements between the MTUC Malaysia and SPSI Indonesia; between LO Sweden and LBAS Latvia; CGTM Mauritania and CNTS Senegal; CTRN Costa Rica and CST, CUS and CUSa, Nicaragua. Further information is available in Global Unions Statement to the GFMD (2008).

98 Global Unions Strategy Meeting on Migration, Brussels, 24.25 September 2012 'Building Alternatives'.

99 Information kindly provided by Gonzalo Murallo, International Relations Secretary, CTA-A, Argentina, correspondence dated 3.02.2020.

100 BWI Impact 2014-2017 Report to 4th World Congress Durban December 2017.

Agricultural workers' unions in Central Asia have signed bipartite and multilateral union-to-union cooperation agreements between affiliates in country of origin and destination, specifying the responsibilities of all signatory unions to protect migrant agricultural workers. In addition, the Central Asia Labour Rights Monitoring Mission,¹⁰¹ established in 2016 by the IUF, BWI and several ITUC affiliates, works collectively to defend and promote ILO fundamental Conventions. It has also more recently focused on the promotion of the ILO Conventions on migrant workers and providing assistance to migrant workers and their country of origin communities. For example, the IUF affiliate in Russia, Novoprof, has supported the Union of Migrant Workers in Isfan, Southern Kyrgyzstan and visits regularly to provide information and contacts to potential migrant workers who move to Russia to work as janitors, or in fast food or hospitality sectors. From small beginnings, the union now has 2,150 members. Interestingly, this initiative first began as an attempt to improve workers' rights in the sending countries and then focused on preventing a degradation of standards in the receiving countries in sectors where migrant workers are found.

Cross-sectoral migrant worker information portals and helplines

In Malaysia, UNI's Liaison Council established a help-line in more than 20 locations to provide support for temporary labour migrants and PSI and BWI later joined the project. It is used by workers who have been injured at work but have not received compensation, or who have had their passports confiscated or wages withheld. In the first two years of its existence, UNI reported that the Malaysian legal team was able to secure RM 840,000 (or approximately USD 200,000) in wage claims for 436 migrant workers from Indonesia, Nepal and Myanmar.¹⁰² The helpline has now evolved into a mobile phone app.

The EFBWW produced a study of best practices on the social inclusion of construction workers in ten countries in 2013.¹⁰³ It also created the European Construction Mobility Information Network, an EU funded on-line resource in several languages. However, it has proved challenging to maintain up-to-date.

EI has also set up a dedicated web portal¹⁰⁴ on refugee and migrant teachers with the goal to help end exploitative practices through the exchange of information and good practice.

In the hospitality sector, EFFAT has worked to ensure equal treatment for the large number of migrant workers and has worked with the employers' association to develop a Europe-wide qualification and skills passport. In 2008, it developed a purpose-specific website for migrant workers and unions featuring details of migration legislation, migration studies, examples of good practice and useful links for migrant workers.

101 See 'Declaration of the International Meeting 'Defending and Expanding Labour Rights in Central Asia: Challenges, Trends and Prospects'', Bishkek, Kyrgyzstan, November 2016 available at: <https://www.labourcentralasia.org/en/about/declaration/>.

102 See Ford, Michele 'From Migrant to Worker, Global Unions and Temporary Labor Migration in Asia', Cornell University, 2019 p. 144.

103 'Strengthening social inclusion of migrant workers in the European Construction and Wood Industries', EFBWW, 2013, Brussels.

104 <https://www.education4refugees.org>.

Support for pathways to citizenship for migrant workers

In the United States, unions have supported migrant workers to access citizenship programmes. For example, specialist union staff from the United Food and Commercial Workers (UFCW) in Iowa assisted 300 members in the meatpacking sector onto a citizenship programme.¹⁰⁵ The United Farm Workers (UFW) in the USA has worked with the major growers' associations to introduce new bipartisan Federal legislation to create pathways for qualified undocumented farm workers to gain temporary legal status and a roadmap to citizenship.¹⁰⁶ However, migrant workers remain very vulnerable to abuse. Another case in North Carolina taken up by the Farm Labor Organizing Committee (FLOC) exposed issues of wage theft and sub-standard accommodation, and a worker who described the situation to a government inspector was summarily dismissed.¹⁰⁷

Good practice on joint inspection of 2022 World Cup projects in Qatar

In Qatar, there is a very particular situation where there are no local trade unions, migrant workers are prohibited from forming trade unions and there is no local construction workforce. Qatar is not a signatory to the ILO Conventions on Freedom of Association (Convention 87), on Collective Bargaining (Convention 98) and on Migration for Employment (Convention 97). In 2016, BWI signed a MoU with the Supreme Committee for Delivery and Legacy for the 2022 World Cup for the joint inspection of the construction sites and accommodation facilities to ensure occupational health and safety standards. By the end of 2018, there had been 16 site inspections that had resulted in considerable improvements. In association with the Qatari Ministry of Labour, BWI has held community awareness forums, which offer a platform for social dialogue between migrant workers and the government. It has also trained paralegal officers, who can assist migrant workers file complaints over employment violations.

As a consequence of international advocacy and ILO technical assistance, the government of Qatar has instigated several significant reforms, including the repeal of the kafala employment sponsorship system, the establishment of a minimum wage, a workers' welfare fund and a workers' dispute settlement system. From January 2020, migrant workers in Qatar will no longer need exit visas, although domestic workers must still provide 72 hours advance notice.¹⁰⁸ However, non-payment of wages and wage theft still remain major grievances. The disputes settlement system takes a long time, and even when a favourable decision is reached, workers often still do not receive the agreed compensation.

The BWI has also signed a global framework agreement with QDVC/VINCI construction companies, operating in Qatar which has led to positive outcomes. There are now bipartite Workers Welfare Committees on the QDVC/VINCI operated sites and independent elections were held for worker representatives in 2016. BWI has provided training for the workers' representatives. In addition, the joint cooperation of country-of-origin affiliates in Nepal, India and the Philippines has empowered the migrant workers communities in Qatar.¹⁰⁹

105 IUF: 'Migrant workers in meatpacking gain U.S citizenship with union assistance', Media release, 29.11.2018.

106 <https://ufw.org/supportfwma/>.

107 IUF: 'USA: farmworkers fired for speaking out against abuses', media release, 6.07. 2013 available at: <http://www.iuf.org/w/?q=node/6276>.

108 'Qatar's programme of labour reforms today succeeded in dismantling the kafala system and heralding a modern industrial relations system' ITUC media release 16.10.2019 available at <https://www.ituc-csi.org/qatar-dismantles-kafala?lang=en>.

109 See BWI Report on Qatar: Analysis and Recommendations (2019).

Research and case studies on circular and temporary labour migration programmes

Over the last decade, trade unions have commissioned or carried out a range of research studies on migrant workers in order to inform their advocacy on the impact of circular or temporary migration programmes. A few significant examples are mentioned below which illustrate the challenges that trade unions have identified based on primary evidence from migrant workers.

Research on teacher migration and mobility

Education International with the support of the American Federation of Teachers (AFT) commissioned a study of the issue '*Getting Teacher Migration and Mobility Right*', and conducted an electronic-based survey which captured the views and experiences of over 1,400 migrant teachers.¹¹⁰

As the report states: "the study reinforces long-held global union policies that reject temporary or circular migration schemes".¹¹¹ The authors identify three types of teacher mobility programmes: authentic professional and cultural exchange, language and specialised training programmes and shortage hiring. While recognising that the first two types of programmes can offer important benefits for students and teachers alike, "when international recruitment is undertaken to address teacher shortages it can leave teachers and students in both source and destination countries vulnerable". The study concludes that international recruitment should be carefully structured to avoid reinforcing unequal distribution of teachers, ensure proper professional support and protections and lead towards permanent staffing solutions. Both source and hiring countries need improved domestic workforce planning and investment and migrant teachers should be offered pathways to permanent status.¹¹²

The study also points to the increasingly significant role of private recruitment agencies in placing teachers in both the public and private sectors and yet notes that their practices are almost entirely unregulated. The 2014 survey found that only 17 per cent of the migrant teacher respondents had permanent visa status; that 64 per cent had used an agency to secure their position abroad and 25 per cent had paid fees and incurred debts to do so.

Teacher migration study in Asia Pacific

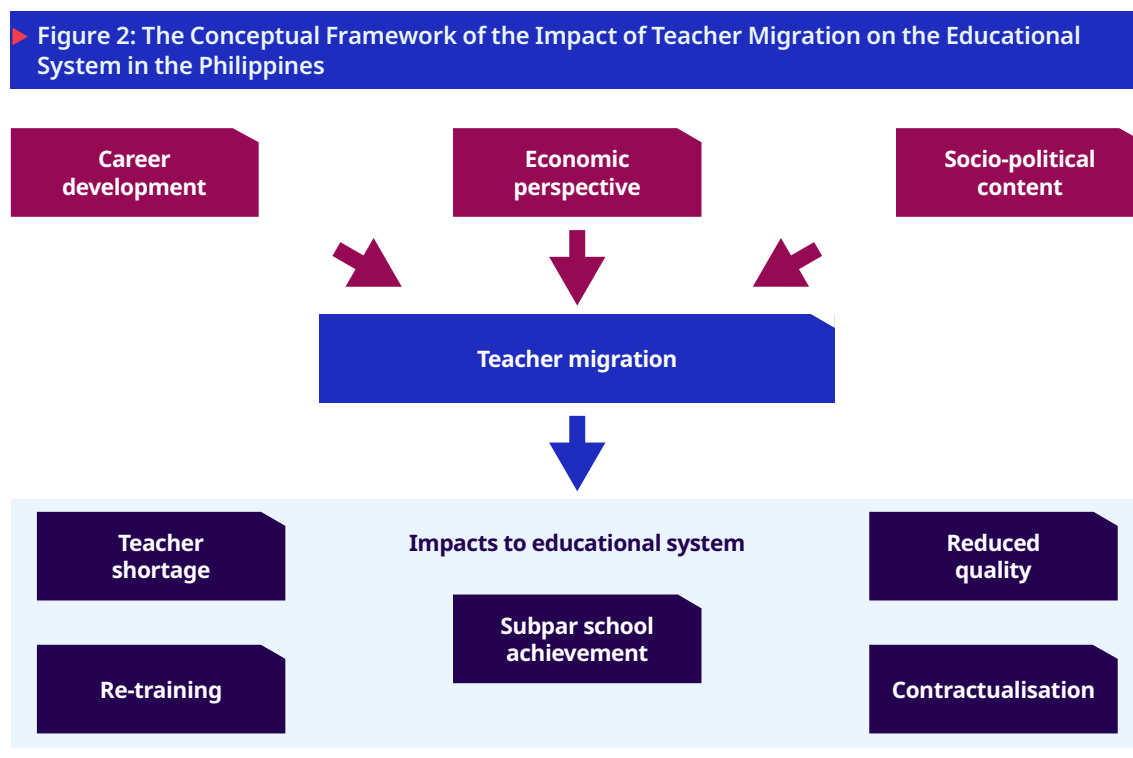
In the Philippines, EI's four affiliates conducted a study of teacher migration in 2013, including a survey of 1,300 teachers in Philippine schools, both public and private.¹¹³ There are two distinct trends: one concerns Philippine teachers who are leaving the profession to find employment abroad, often in the Gulf States or the USA, in care work or domestic service, creating a net loss to the teaching profession; and teachers, often those with most experience in core subjects, such as maths and science, recruited to work abroad in public or private schools. Nearly 70 per cent of migrant teachers are women, with both individual consequences for their own vulnerability to gender-based violence and the social consequences for Philippine families and society. The study developed a conceptual framework defining the causes and consequences of teacher migration on the education system (see Figure 2).

110 Caravatt, Marie-Louise, Lederer, Shannon McLeod, Lupico Allison, Van Meter, Nancy, "Getting Teacher Migration and Mobility Right" Education International, Brussels, May 2014 available at: <https://issuu.com/educationinternational/docs/teachermigrationstudy>.

111 Caravatt, Marie-Louise, Lederer, Shannon McLeod, Lupico Allison, Van Meter, Nancy, "Getting Teacher Migration and Mobility Right" Education International, Brussels, May 2014 available at: <https://issuu.com/educationinternational/docs/teachermigrationstudy> P. 7.

112 Caravatt, Marie-Louise, Lederer, Shannon McLeod, Lupico Allison, Van Meter, Nancy, "Getting Teacher Migration and Mobility Right" Education International, Brussels, May 2014 available at: <https://issuu.com/educationinternational/docs/teachermigrationstudy> P.11.

113 'Research on Teacher Migration: An EI-Philippine Affiliates Initiative', Education International/ Lärarförbundet/ASEAN Women's Network (Philippine Affiliates) 2013



Among the conclusions of the study was the need to improve retention strategies and investment in education, and to conduct nationwide information campaigns on the realities of teachers' migration. The study also recommended that the Department of Foreign Affairs (DFA), Department of Labor and Employment (DOLE), and Department of Education (DepEd) strengthen their collaboration with the EIAP affiliates with a view to reviewing the functions of the DOLE Technical Working Group on Bilateral Labour Agreements, which was created in 2011 and led by the Philippine Overseas Employment Administration (POEA).

The EIAP also identified the lack of data on how many teachers are migrating within and away from the region, whether as teachers or to take up other work. At a workshop in Kuala Lumpur, Malaysia on 'Teacher Migration and Social Protection', held in September 2015, to present the research findings, EIAP expressed concern about the increasing trend for teachers to migrate, the exploitation of migrant teachers by recruitment agencies and employment bodies in receiving countries, discriminatory treatment and lack of union representation for the majority of migrant teachers abroad. The workshop also called for accelerated action on the development of an ASEAN Mutual Recognition Agreement, which has been under discussion for over 10 years and is apparently stalled.¹¹⁴

The EI affiliate, the National Alliance of Teacher and Office Workers (SMP-NATOW) has noted that public school teachers returning from abroad are not allowed to re-integrate into the public education system. However, as licensed professionals with relevant experience, they may be offered positions in other government agencies.¹¹⁵

114 EI/FES Workshop Report on Teachers' Migration and Social Protection, September 29- October 1 2015, Kuala Lumpur, Malaysia and see also 'Mendoza, D.R. & Sugiyarto, G. 'The Long Road Ahead: Status Report on the Implementation of the ASEAN Mutual Recognition Arrangements on Professional Services', Asian Development Bank, 2017.

115 Correspondence with NATOW, 10 January 2020.

Case Studies of the Gulf Cooperation Council States

The situation in the Gulf Cooperation Council (GCC) states is illustrative of the weaknesses of the current BLMAs. An ITUC-commissioned study of labour migration to the GCC states from Ghana, Kenya, Nigeria and Uganda noted a sharp rise in migration trends in recent years. Despite some government initiatives, regulation of recruitment agencies remains very weak. The BLMAs negotiated by these counties offer very limited protection in terms of human and trade union rights. National labour ministries and public employment services are insufficiently engaged and migration issues are the responsibility of the home office, foreign ministries and border and security forces rather than the ministries of labour.¹¹⁶ The study notes that the lack of coordination among government departments makes effective partnerships with trade unions and other civil society organisations a challenge. Furthermore, the study criticised the kafala or employer sponsorship system which leaves workers more vulnerable to abuse, particularly so in the case of domestic workers.

A further ITUC legal and policy brief on the labour laws in the GCC states concludes that BLMAs commonly fail to include the full range of protections necessary to prevent the exploitation of migrant domestic workers in the Gulf and 'they do not appear to have materially improved the conditions of domestic workers in practice in the region.'¹¹⁷ The agreements also reinforce racial hierarchies and inequality as wages and conditions of work are set country by country. An analysis of the Saudi-Arabia-Philippines agreement (May 2007) offers a detailed critique of the limitations of the protection afforded the migrant workers.¹¹⁸ The study concludes that regional agreements may offer greater potential to protect migrant workers' rights than BLMAs.

Recruitment practices and regulations

Trade unions consider that the private recruitment industry should be regulated through mandatory, enforceable mechanisms rather than voluntary programmes and promote the ILO's '*General Principles and Operational Guidelines on Fair Recruitment*'. Trade unions note that at present, recruitment of migrant workers often takes place within a legal and regulatory vacuum, leading to grave abuses of the rights of migrant workers. The licensing or regulation of recruitment agencies is a long-standing demand, together with the joint liability of recruiters and employers so migrant workers have greater remedy options in the event of contract violations and the strict prohibition of the charging of fees to migrant workers.

Migrant Worker 'Recruitment Advisor' Platform¹¹⁹

Launched in April 2018, and developed with the support of the ILO Fair Recruitment Initiative, the ITUC Migrant Workers 'Recruitment Advisor' Platform is designed to promote fair recruitment. It lists a large number of licensed private recruitment agencies, provided by governments, in eight countries and allows workers to learn about their rights. It also lists existing BLMAs in the selected countries. The platform invites migrant workers to review the recruitment agencies by sharing their experiences. The data and evidence it generates can be used for advocacy purposes. For example, it has already been found that 80% of the migrant workers accessing the site are not free to leave their country of employment and that

116 ITUC 'Africa Labour Migration to the GCC states. The Case of Ghana, Kenya, Nigeria and Uganda' by Kennedy Atong, Emmanuel Mayah & Akhator Odigie 2018.

117 'Facilitating exploitation: a review of labour laws for migrant domestic workers in GCC countries,' ITUC Legal and Policy Brief, November 2014.

118 'Idem pp. 45-47.

119 See: <https://www.recruitmentadvisor.org>.

salaries in practice are less than that initially promised.¹²⁰ It is also expected that the site will encourage migrant workers to reach out to local trade unions in countries of destination and to the development of further union-to-union cooperation agreements. Good practice examples include the setting up of an Indonesian network of migrant worker activists that in October 2019 signed a joint commitment to prevent the irregular recruitment of migrant workers; and in Kenya, advocacy on the part of the Kenyan Union of Domestic, Hotels, Educational Institutions and Hospital Workers (KUDHEIHA) for the adoption of stronger regulation of private recruitment agencies.

International Recruitment Integrity System (IRIS)

The International Organization of Migration (IOM) has carried out a substantive programme of capacity building on BLMAs and developed regional guidance.¹²¹ In cooperation with the International Organisation of Employers (IOE), beginning in June 2018, it established the IRIS standard as a voluntary certification system for recruitment agencies together with a pilot project in two Canadian provinces.¹²² The ITUC recognises that the IOM currently has a pivotal role on labour migration within the UN but it has a fundamentally different approach to migration compared to the rights-based approach of the ILO. While recognising the intention to strengthen fair recruitment practices, the ITUC has expressed concerns about this certification system. It considers that voluntary auditing or self-regulation processes generally prove ineffective in correcting and removing abuses and have called instead for government controlled licensing systems as a regulatory mechanism.

Ethical Recruitment Initiatives

There are a number of national, regional and multilateral codes, regarding ethical recruitment in the health and teaching sectors, in which trade unions have engaged to varying extent in the drafting and monitoring. A future challenge is to strengthen the regulation and ethical recruitment of the home-care sector.

Commonwealth Teacher Recruitment Protocol (2006)

Education International considers that the Commonwealth Teacher Recruitment Protocol (2006) is an instrument of good practice. It is similar in purpose, content and status to the Commonwealth Code of Practice for Health Professionals. It recognises that organised recruitment of teachers may be detrimental to the education systems of source countries and to the costly human resource investments that have been made in teacher education (Article 3.2). The Protocol commits recruiting and source countries to agree on mutually acceptable measures to mitigate any harmful impacts of such recruitment. It also states that recruited teachers shall enjoy employment conditions not less than those of nationals of similar status and occupying similar positions. The Protocol has provision for bilateral agreements to provide for specific professional development opportunities for recruited teachers who are about to return to their country of origin after a fixed term (Article 3.15). EI affiliates played a major role in advocating for the Protocol and from 2001, formed the Commonwealth Teachers' Group under the auspices of EI in order to campaign for its adoption.

The Commonwealth Secretariat established a monitoring and evaluation group, known first as the Steering Committee on Teacher Qualifications and Professionals Registration, and then later renamed the Working Group on Teacher Recruitment. This Group met annually until 2012 to review progress with a specific focus on the South and Caribbean States. After that date, priorities changed and the funding for these meetings ended. Education International regrets that the monitoring of the implementation of the code has therefore been weakened.

¹²⁰ Interview ITUC December 16 2019.

¹²¹ Regional Guidelines for the Development of Bilateral Labour Agreements in the Southern African Development Community (2016) IOM Mozambique Office.

¹²² <https://iris.iom.int/stakeholder-engagement>.

The review meetings comprised equal numbers of union representatives and government. Because of the high incidence of migration to the United States, the AFT was also co-opted as a member. The Group worked on model legislation to be adopted at national level to make the Protocol operational in source and recruiting countries, together with a regulatory framework for recruiters and agencies.¹²³

Although the Protocol is not legally enforceable, in some countries, there have been legislative initiatives to transpose it into law and several Caribbean Parliaments have endorsed the Protocol, which has enhanced its moral and political force.¹²⁴

► **Figure 3. Ethical recruitment in the health sector**

International codes on health workforce recruitment



Source: Adapted by author from Shaffer et al Human Resources for Health 2016.

123 Keevy, James 'A continental teacher recruitment protocol in Africa: key considerations from the Commonwealth Teacher Protocol, in 'Next Steps in Managing Teacher Migration: Papers of the 6th Commonwealth Research Symposium on Teacher Mobility, Recruitment and Migration Ed by Jonathan Penson and Akemi Yonemura, Addis Ababa, Ethiopia, 8-9 June 2011.

124 EI Task Force on Teacher Migration and Mobility Minutes of Meeting, April 15-16 2011, NEA Headquarters, Washington D.C.

Voluntary Code of Ethical Conduct for the Recruitment of Foreign-Educated Health Professionals to the United States (Alliance Code) in 2008

In the United States, the majority of migrant health professionals come to the country through private recruitment agencies, which are largely unregulated. The number of recruitment agencies based in USA increased from 30-40 in the late 1990's to 267 agencies a decade later. The Alliance for Ethical International Recruitment Practices launched a Voluntary Code of Ethical Conduct for the Recruitment of Foreign-Educated Health Professionals to the United States (Alliance Code) in 2008. The Code includes minimum standards for employers and recruiters, including commitments to adhere to applicable US laws, and ethical contractual provisions. A multi-stakeholder task force included hospitals and employers, and the trade unions, the AFT and Service Employees International Union (SEIU), nurse training and licensing organisations and recruiters, and in some meetings senior US government officials, as well as foreign nurses' professional organisations. After the launch of the code, the Alliance developed a monitoring and verification system to ensure certified recruiters were adhering to their commitments, with the participation of the trade unions. As such, the Alliance has provided a forum for all stakeholders to come together. A tradition of cooperation has enabled it to build a collaborative approach among constituent groups, including regulators, employers, recruiters, unions and professional organisations.¹²⁵ PSI considers that the collaboration with trade unions and professional organisations in the development, drafting and monitoring of this national code is a model that could be adopted in other country contexts.

A similar code was established for the teaching profession in 2015, with the active participation of the National Education Association (NEA) and the AFT, the AFL-CIO and with the support of EI. AFT welcomed the Code,¹²⁶ which in large part had been initiated as a result of an earlier study by the union that revealed the extent to which migrant teachers were victims of extortion, abuse and fraud.¹²⁷

EPSU-HOSPEEM Code of Conduct on Ethical Cross-Border Recruitment and Retention (2008)

This code of conduct was initiated in the context of the EU Sectoral Social Dialogue in the Hospital Sector and is an example of a social partner-based public policy tool. EPSU, the European organisation of public service unions, considers that the code is an important instrument to support the free movement of workers within the EU while preventing unethical competition between Member States and employers with regard to the recruitment process, fair and transparent contracting and the induction of migrant workers at the new workplace. It also embeds equal and non-discriminatory treatment, freedom of association, social protection and access to training and career development. Since its adoption, EPSU considers there has been a constructive dialogue with HOSPEEM employers.¹²⁸ The Code has been used in different ways at national level and either incorporated in legislation, collective agreements or enterprise-based agreements. For example, in the case of the UK, NHS employers are required to only use Code-compliant recruitment agencies and a key tenet is that recruitment of staff from abroad should not damage healthcare systems. For that reason, overseas recruitment from developing countries should only take place when a bilateral government agreement is in place.

125 Shaffer et al 'Code for ethical international recruitment practices: the CGFNS alliance case study' in Human Resources for Health 2016, 14 (Supple 1: 31).

126 'AFT hails new international teachers' recruitment code', AFT media release, 9.06. 2015, available at: <https://www.aft.org/news/aft-hails-new-international-teachers-recruitment-code>.

127 AFT 'Importing Educators: Causes and Consequences of International Teacher Recruitment' 2009.

128 'Employees and trade unions renew commitment to ethical cross-border recruitment and retention policies' EPSU Media Release, 8.04 2018: <https://www.epsu.org/article/employers-and-trade-unions-renew-commitment-ethical-cross-border-recruitment-and-retention>.

The WHO Global Code of Practice on the Ethical Recruitment of Health Personnel (2010)

The WHO Code is broader in scope than the EU code and includes sections on international cooperation, support to developing nations and data collection and information exchange. The Code recommends that active international recruitment of health personnel from developing countries facing critical shortages of health personnel should be discouraged (Article 5.1) and includes commitments to strengthen developing countries' health systems (Articles 10.2 and 10.3). However, PSI is generally critical of the Code's encouragement of the circular migration of health personnel (Article 3.8). According to the PSI, implementation of the Global Code is still insufficient. In the Second Round of Reporting (WHO 2019), 74 out of 164 Member States submitted reports. 65 bilateral agreements were identified during this second round report, although only 22 countries stated that they had taken into account ethical considerations.

Legal cases against abusive private recruitment companies supported by teacher unions

AFT supported a landmark lawsuit against a US-based recruitment company in Louisiana, where 350 Philippines teachers had been forced to pay substantial fees and other charges, and faced intimidation and the illegal withholding of immigration documents. AFT has also been an active advocate against the US temporary visa scheme, H-1B 'Speciality Occupation' issued to the employer rather than the worker. It is valid for up to six years and only the employer can request permanent residency, requiring the employer to document that there are no qualified local candidates for the position. In this way, the migrant teacher is vulnerable, lacks job security and union-negotiated protections are undermined.

PSLINK in the Philippines has also supported teachers to file complaints with the Philippine Overseas Employment Agency (POEA). One case in 2011 involved ten teachers and the recruitment agency was found liable for gross violations and grave misconduct, fined, required to refund recruitment fees and the operating license suspended. These cases reveal the importance of collaboration between unions in source and destination countries to protect the rights of migrant teachers.

IUF affiliates in Italy campaigned for a new law establishing a crime for any person engaged in recruiting or employing workers under illegal or exploitative conditions. The 2016 Law on '*Caporalato*' or gang masters has given the IUF affiliates new opportunities to combat exploitative practices and there have been some action by the police and judicial authorities following union complaints. These demands were in response to incidents of trafficked workers from Tunisia being forced to work in agriculture.¹²⁹

129 IUF: Italy: new union initiatives to combat widespread abuses of migrant agricultural labour' Media Release, 12.10 2016 available at: <http://www.iuf.org/w/?q=node/5176>.

7. Findings and conclusions

Trade unions advocate a rights-based approach to labour migration and consider that ILO Conventions No 97 and No 143 and their accompanying recommendations remain valid and relevant today, as reaffirmed by the Committee of Experts in its report on the 2016 General Survey.¹³⁰ Many other labour standards are equally applicable to migrant workers, in particular the fundamental Conventions, and others such as the Domestic Workers Convention No 189 (2011) and the Violence and Harassment at Work Convention No 190 (2019). The ILO Multilateral Framework on Labour Migration (2006) and the General Principles and Operational Guidelines for Fair Recruitment (2016) as well as the standards contained in the 1990 International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should also be taken into account.

Trade unions express concern that temporary forms of migration are becoming a permanent feature of the labour market and that employers are hiring workers on temporary contracts for what in effect are permanent posts, often without adequate consideration or investment in skills development or vocational training to meet domestic labour shortages. Trade unions express serious reservations concerning circular and temporary labour migration schemes and the gaps in the protection of workers' rights that are often inherent in such schemes. The measure of their value should be the extent to which they address abusive and fraudulent recruitment and employment practices, how accessible their content is to migrant workers, the existence of adequate monitoring of the implementation, access to enforcement mechanisms and institutional provisions for social dialogue.

However, this situation varies depending on the sector. For example, trade unions in the health sector do not consider any model of circular or temporary labour migration schemes as a viable solution given the permanent nature of health care work and the global shortage of health care workers.

Trade unions note the proliferation of regional and bilateral labour migration agreements and protocols, many of which are overlapping and inconsistent. They are generally critical of the non-transparent process in which BLMAs are drawn up. They regret that institutionalised social dialogue on labour migration remains the exception and that bilateral and other agreements on labour migration typically exhibit many shortcomings. The great majority of bilateral schemes are drafted, negotiated and implemented without consultation with trade unions and neither do trade unions have an institutionalised role in monitoring and follow-up. The Germany-Philippines Bilateral Labour Agreement on Nurses where unions are part of the joint monitoring committee is a notable exception to this situation.

Temporary or circular labour programmes can exacerbate the social and economic costs of migration and its gendered impact, particularly in female-dominated sectors. Trade unions note the discriminatory practices are often embedded in different temporary or circular labour migration schemes so that migrant workers, depending on their country of origin or sector of employment, are granted different entitlement packages.

Most temporary or circular migration programmes structurally deny or inhibit rights to freedom of association and can be used to have a chilling effect on trade union organising and hence undermine established working conditions in destination countries.

At national level, there is insufficient coordination between government authorities on labour migration issues. National labour ministries and public employment services are insufficiently engaged in consultations and negotiations over labour migration schemes.

¹³⁰ See: 'Promoting fair migration: General Survey concerning the migrant workers instruments', Report of the Committee of Experts on the Application of Conventions and Recommendations Report III (Part 1B) ILO 2016 para 654.

In relation to health and education personnel, the trade unions are strong advocates of international agreements on ethical international recruitment standards, which should include trade union participation in the drafting and monitoring of the codes and compensation mechanisms to support health or education skills development in countries of origin. Both source and destination countries need improved domestic workforce planning and investment and any migration schemes should be carefully structured and offer pathways to permanent status. In the education sector, unions recognise the value of authentic professional and academic exchange, but express concern about schemes which are undertaken to address teacher shortages in destination countries. The Commonwealth Teacher Recruitment Protocol (2006) is a good practice but the Working Group set up to monitor its implementation, which included the social partners, was regrettably disbanded. The trade unions welcome initiatives in some countries to transpose ethical recruitment protocols into law. In the health sector, trade unions oppose recent proposals for public-private Global Skills Partnerships. They consider that such partnerships must be kept in the public sphere, ensure a rights-based approach and the full engagement of trade unions in their operation, or they could risk undermining collective agreements and existing labour laws and protection.

Bilateral and multilateral union-to-union cooperation programmes between trade unions in countries of origin and destination play a significant role in securing migrant workers' rights. Governments should safeguard trade union programmes to organise migrant workers by recognising international labour standards and ensuring their national application in both law and practice.

Trade unions call for the equal application of legal and administrative provisions for all migrant workers, independent of the country of origin or sector of employment. In particular, as in some countries this is not the case, domestic, home-based care and agricultural workers should be covered by employment law and entitled to social protection and severance benefits. There should be provisions for the portability of pension entitlements on return to the country of origin.

Trade unions consider that visa schemes for temporary labour migration should not limit or prohibit a worker's right to transfer to another employer and that there should be pathways to permanent migration for workers of diverse skills. Women migrant workers are particularly vulnerable and there should be specific measures to protect them against abuse and violence as well as their rights to appropriate health care and access to justice.

In order to ensure equal access to justice, temporary migrant workers, including irregular migrant workers, must be able to file grievances with the Ministry of Labour or other competent authorities, have access to the labour courts; be granted legal aid; and be eligible for compensation and redress in cases of violations of their labour rights and in abusive situations. In cases where temporary migrant workers leave the country while their case has not been resolved, they should be able to continue to pursue the case in the courts.

Temporary migrant workers should be allowed to join national unions of their choice and to form their own migrant workers' unions. There should be effective remedies to prevent intimidation, dismissal or non-renewal of contracts of temporary or seasonal migrant workers who join or are active in unions.

Each BLMA and regional labour migration agreements should include a standard procedure for consultations with social partners, in their negotiation and implementation. The monitoring and follow-up mechanism could possibly be similar to the reference groups established under the Global Framework Agreements with multinational enterprises.

In countries with large migrant workforces, trade unions urge governments to set up permanent tripartite structures, vested with decision-making authority, convened by the Ministry of Labour and together with other relevant Ministries and interested stakeholders, to address issues of temporary migration and to identify problems and seek solutions.

The current consolidation of labour migration agreements in the context of RECs is a potential opportunity to strengthen the role of national labour ministries and public employment schemes as well as promote tripartite dialogue at both national and regional level.

The trade unions consider that the private recruitment industry should be regulated through mandatory, enforceable mechanisms. All trade unions strongly support the prohibition of recruitment fees charged to migrant workers. To this end, there should be national recruiter registries set up by government agencies in both the country of origin and destination and joint liability of recruiters and employers so migrant workers have access to remedies in the event of contract violations.

BLMAs should include some form of human capital replenishment mechanism or professional development programme to compensate countries of origin.

Recommendations for follow-up by the ILO

Given the very low ratification rates of the ILO Convention 97 and Convention 143, efforts to promote their ratification should be strengthened.

The ILO is the main UN agency taking a lead on the governance of labour migration, because of its rights-based, constitutional mandate, tripartite structure and expertise in labour issues. The ILO can usefully play a convening role in bringing governments of origin and destination together with the social partners in consultations and negotiations on both REC and bilateral labour migration agreements and in promoting a rights-based approach.

Bilateral agreements and regional labour market agreements within the context of RECs could include a standard procedure for consultations with social partners, in negotiating, implementing and monitoring the agreements. Technical assistance from the ILO in this regard could be useful.

In this way, when the ILO is requested to provide technical assistance on developing a BLMA, a mechanism could be developed, whereby the social partners are informed and consulted from the initial drafting phase.

As the lead UN agency, the ILO could be given the mandate to host a transparent and open-access database of BLMAs in association with other UN agencies and members of the UN Migration Network. In this regard, the Asia Pacific migration network database on MOUs, BLMAs and Standard Employment Contracts is a good practice that could be continuously updated and usefully extended to cover other regions.

The ILO could strengthen its work to assist governments in establishing mechanisms at national level to ensure coordination and consultation among all relevant ministries and with labour ministries taking a leading role.

Gender-sensitive research could be commissioned to promote alternative models to temporary labour migration that embed strong protection of the labour rights of migrant workers; apply principles of non-discrimination, including on social protection; the right to freedom of association; provide for the right to permanent status and pathways to citizenship; equitable human resources development for countries involved; allow for family reunification; and include effective mechanisms to regulate employers and provide for remedies in cases of abuse.

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